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# THE OCEAN, THE RIVER, AND THE SHORE.

## PART I. NAVIGATION.

BY  
J. W. WILLCOCK, Q.C.,  
AND  
A. WILLCOCK, M.A., BARRISTER.



"Et quidem naturali jure communis sunt omnium hæc: aer, aqua profluens, et mare et per hoc litora maris."—INST. I. 2. t. 1.

LONDON:  
ROUTLEDGE, WARNE, AND ROUTLEDGE,  
FARRINGTON STREET.  
1863.

*[The right of Translation is reserved.]*

PRINTED BY  
JOHN EDWARD TAYLOR, LITTLE QUEEN STREET,  
LINCOLN'S INN FIELDS.

## PREFACE.

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THIS book is intended rather for the merchant, the mariner, the riparian proprietor, the fisherman, the jurist, and the general reader, than for the lawyer ; although it is hoped that he will not find it useless. We must impress on the mind of the reader, that the references to books and cases are to direct him to information on the subject, and not to authorities for the propositions stated. It will often be found that the text differs from the writings to which reference is made. The object of the authors is to show what is law, rather than what has been enunciated and accepted as law.

The years of the Christian era are indicated thus—100. Years before the Christian era, thus—B.C. 100.

The design comprises fishing, the use of waters, and the shore ; but each part will be, so far as practicable, complete and independent of the others.

Free is the ambient air, and quite as free  
The heaving billow of the open sea.  
Free are the river's course and sparkling rill ;  
To sail, to fish, for each to quaff his fill.  
But war denies the freedom nature gave,  
And sends new terrors o'er the stormy wave.  
The fertile lands are cantled out ; and they  
Alone, who share them, seize the feathered prey  
And finny wanderers of the watery way.  
Stern usurpation taints the bounteous stream  
With miner's poison and with miller's steam,  
And plants his weirs, and stake-nets on the shore,  
And robs alike the fisher and the poor ;  
And dams the current for his single gain,  
While herds and pastures pine, but pine in vain,  
For brooks imprisoned and sequestered rain.

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145	3	. A	, a
—	4	, s	. s
153	5	. A	, a
—	6	,	.
195	8	darkness	thickness
197	5	Olbia	Olbin
240	3	more, the	less, their
384	2	frequent	frequenting
—	10	Southern	northern
490	2	North	South
503	15	Grant's Astronomy	
517	1	imported	imparted
534	43	amigendi	assaigendi
639	3	regulator	regulation
957	85	care	case
960	3	Venedotian	Venedollan
213	3	horror	terror

## REFERENCES.

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|---|---|--|
| <p>Ang. Angel on Waters.<br/>         Cl. Fin. Clarke and Finnely Reports.<br/>         C. B. Common Bench. N. S. New Series.</p> <p>Cr. Cranch (American).<br/>         Dal. Dallas (American).<br/>         Dod. Dodson.<br/>         Don. Douglas.<br/>         Ed. Edwards.<br/>         El. B. Ellis and Blackburn.<br/>         Ex. Exchequer.<br/>         Gal. Gallison (American).<br/>         Hag. Haggard.<br/>         Jur. Jurist. N. S. New Series.<br/>         K. J. Kay and Johnson.<br/>         L. J. Law Journal. N. S. New Series.<br/>         L. T. Law Times. N. S. New Series.<br/>         Lush. Lushington.<br/>         Macq. Macqueen, Law of War and Neutrality.<br/>         Macph. Macpherson, Annals of Commerce.</p> | <p>1, 2, or 3 M. S. A. See sect. 709.<br/>         M. L. C. Maritime Law Cases.<br/>         M. W. Meeson and Welsby.<br/>         Mo. P. C. Moore's Privy Council Cases.<br/>         No. of Ca. Notes of Cases.<br/>         Phill. Phillimore.<br/>         Rob. Charles Robinson.<br/>         W. Rob. William Robinson.<br/>         W. Rep. Weekly Reporter.<br/>         Sum. Sumner (American).<br/>         Sp. Spinks, Prize Court Cases.<br/>         1 or 2 Sp. Spinks, Ecclesiastical and Admiralty.<br/>         Swa. Swabey.<br/>         Westl. Westlake on Commercial Blockade.<br/>         Whea. Wheaton. [6th ed., the last appeared while this book was in the press.]<br/>         Whea. Rep. Wheaton's (American) Reports.</p> |  |
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*The numerals in brackets refer to sections of this book.*

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| <p>Abo, 1 Sp. 349, (1352.)<br/>         Actif, Swa. 237, (1073, 1688.)<br/>         Activo, 1 Ed. 185—5 L. T., n. s. 773, (945, 1687.)<br/>         Adelaide, 3 Rob. 284, (1524.)<br/>         Admiral Boxer, Swa. 195, (823, 861.)<br/>         Adventure, 8 Cr. 227, (1655.)<br/>         Africa, 1 Sp. 299, (1017, 1048.)<br/>         African Ship Co. v. Swanzeay, 1 K. &amp; J. 326—4 W. Rep. 210, 692—37 L. T. 248, (916, 917, 964, 966.)<br/>         Aina, 1 Sp. 10, 818, (1842, 1852, 1759, 1760, 1766.)<br/>         Albion, Lush. 283, (1021.)<br/>         Alecock v. Doxford, 7 L. T., n. s. 102, (811.)</p> | <p>Alexander, 8 Cr. 169, (1321.)<br/>         — v. Duke of Wellington, 3 Russ. &amp; M. 54, (1637.)<br/>         Alfen, Swa. 189, (1004, 1024, 1061.)<br/>         Aline, 1 W. Rob. 123, Sp. 323, (999, 1740, 1741.)<br/>         Aliwal, 1 Sp. 96, (858.)<br/>         Alpha, Lush. 89, (1077.)<br/>         Amity, Swa. 103.<br/>         Andrew v. Tuscarora, 5 L. T., n. s. 62.<br/>         Andrews, 1 Swa. 226, (1021.)<br/>         Anna, 4 Rob. 119, (618, 1767.)<br/>         Anna Maria, 3 Whea. Rep. 337, (1781.)<br/>         Annapolis, Lush. 305—Lush. 295—5 L. T., n. s. 326, (573, 583, 776, 807, 867.)</p> |
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# THE OCEAN, THE RIVER, AND THE SHORE.

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## INTRODUCTION.

1. So far as the interests of man are concerned, the whole surface of this globe and its crust, to the extent to which it can be penetrated, are to be enjoyed according to the manner in which they can be best enjoyed. When this is ascertained, we shall have ascertained the law which governs their enjoyment. That may be properly called the natural law, or the law of nature.

2. Confining our consideration to the interests of mankind, the whole of the surface is divisible into two portions, which, however, are interspread among each other.

3. The first is land, the second is water.


4. The land may be most advantageously enjoyed by individuals, separately or in small associations, under the protection of the larger societies, called nations. With this portion we are concerned only so far as it is connected with the enjoyment of the other.

5. The land is the gift of nature, to be improved and enriched by the art of man. Its greatest value arises from building and cultivation. Little by little enclosures gain

upon forests and wastes. More slowly the hoe, the plough, and the crops follow. The rest of the wide domain is hardly trespassed upon, except by stealth, or when the chief goes forth to hunt, to direct the pastime and divide the spoil. Cultivation gradually presses forward, and civilization begins to dawn; from time to time some arch-savage reclaims the fields for his forest, consecrates a desolation to his game, and licenses his sub-savages to make for themselves wildernesses as waste, though not as wide as his. Yet, again, the axe marches forward and the stag retires, cities swarm, villages teem with an active population, and the mountains feel the plough.

6. Gradually art and civilization possess, improve, and subdue the land, measuring and meting it out as the reward of industry, and the only sure mode of improvement; and thus establish the rights of property and the dominion of man, with ordinations for its regulation, which may be called the Terrene law.

7. Not so the water: Nature gave it to be free; to sport with the tempest and to thunder upon the shore; to gush from its fountains, enamelled with verdure and flowers; to flow through the valley, suffusing it with beauty and spreading fertility as it flows. Nature gave it for the habitation of inmates as free and as wild as its wave. Nature gave it for the use of man; but limited his dominion and his right to actual enjoyment and use. Nature has given him some, but little, power of possession or dominion over it. Man may vary the lines of its smaller features. He can well up the little springs, he can embank and sometimes alter the direction of the tiny streams, he can raise a mole at the side of the river, and even thrust it, but not far, amid the refractory breakers. Water will impose its own law, man can no more resist its mandates than he can repel its waves; he can check, and does check, each a little; and he strives, but strives in vain, to subjugate the margin and the ordinances of the sea. Water flows and will flow, and its inmates will



be free. Man detains a little in a pond and triumphantly says, "This at least is mine." But even that vanishes in vapour or steals away to the stream. To restore his petty property he must supplicate the fountain or the rain. He plants on the coast a bed of oysters, and gathers together and tries to domesticate their spat. The villain mollusks attach themselves to the soil. He says, "I can measure them by the yard, I can mete them out by the bushel, surely these are mine!" But behold Leviathan, "will he make supplications unto thee? will he flatter thee? will he make a covenant with thee? wilt thou take him for a servant for ever?" Wilt thou imprison the royal salmon cased in glowing steel, the gold-suffused vermilion-spotted trout, the graceful grayling in his silvery sheath? they will suspect thy stratagem and struggle to evade thy skill; though captured they are unsubdued, they will keep no parol with thee; check their freedom, restrict their wanderings, their gorgeous vestments fade, they pine, they die, they cannot live as slaves.

8. Man may use the ocean and the stream: he may spread wide the canvas, and capture the habitants of the waters: but he may imprison neither the wave nor the wanderer within it.

9. The water is susceptible of enjoyment, and may, having regard to the interests of mankind, be enjoyed most advantageously in four methods:—(1) by all men, which gives the general right; (2) by all the people of a particular country, which is the foundation of the national or public right; (3) by such of the people of a nation as have the right to approach it, which confers the riparian right; and (4) by the persons on or under whose land it lies, which springs from the right of property, and may be designated the territorial right. But the less extensive of those rights do not exclude the more extensive, so far as the more extensive can be consistently enjoyed. The limits between the land and the water are not unalterably fixed. Portions of land are



periodically covered and left dry, sometimes to a greater, sometimes to a less extent, exhibiting expanses more or less susceptible of the co-existence or alternation of terrene and aquatic rights, in a due subordination to be determined by the supreme law, utility to man.

10. Water has the power of diminishing and of adding to the quantity of the land. Man has also, to some extent, the like power. So that what was subject to the terrene may become subject to the aquatic, and what was subject to the aquatic may become subject to the terrene rights.

11. Utility determines where and when the aquatic and where and when the terrene rights shall prevail, and where either shall have exclusive or paramount sway ; the principal conflict is on the frontier.

12. Their participation and the regulation of their participation in the general right, and the extent of their respective frontiers, must be determined by the actual or assumed agreement of nations, their treaties or the law of nations.

13. This external law, in an imperfect mode, regulates the relations of societies in contact with each other. Their agreement or assumed agreement provides for the enjoyment by each of its own acquisitions, without the interference of any other, with the measure or method of their subdivision.

14. The internal law provides, so far as it can, for the distribution and enjoyment of its possessions and acquisitions among and by the members of each community.

15. The external and internal law must proceed on the same principles.

16. To ascertain these principles we must again present to the mind the whole expanse and magnitude of the waters, the oceans, the seas, the lakes, with all their ramifications, their tributary rivers and affluent streams ; the ponds, the diffuse and stagnant water, the pools, the subterranean fountains, and the descending rain.

17. We must ascertain the purposes to which they are applicable, and apportion them according to their applicabi-

lity to the use of man. We must consider the relative importance of their uses, not only generally, but with regard to particular assemblages of men and their especial wants; so that the great mass may conduce to the utmost extent to the profit and enjoyment of all. Water is the gift of nature, of which none can take permanent possession, in which absolute ownership cannot exist. It falls in showers, it gathers, it accumulates, it evaporates, it flows to fertilize the land, to feed and cleanse its inhabitants, and to make for them a great highway. These are the ordinations of Providence, these are the bounties it bestows; and all interference with their due enjoyment is in contravention of the natural law, and an infringement of the natural right. The office of civil ordinations and of social laws is to regulate the enjoyment so that all may best enjoy.

18. **ENJOYMENT.**—To enable us to form a proper judgment as to the rights to water, we must consider the nature of the thing. It is an element unsusceptible of permanent possession. The only possession which can be held of it is transient, determining with its use. After it has been used by one it may be employed by another, in its pure or in a deteriorated or an altered form. The flowing stream will eventually surmount every obstruction; even the water of the pond will evaporate or become partially decomposed. The sea is ever fluctuating and changing, the most powerful navy can only hold possession over the space which it occupies and can command, and will be expelled from that limited dominion by the first storm.

19. On this depends the natural law. The law of nations for reciprocal security and enjoyment has introduced a metaphysical possession, or dominion, or ownership of the waters in and bordering upon each state; and to render the enjoyment more complete, municipal laws have accorded a constructive possession, more or less absolute, in the subterranean fountain, the pond, and portions of the stream.

20. **WATER** may be considered as divided into the sea, the

stream, and the fountain, a little of it as imprisoned in the pond.

21. **THE SEA, OR NAVIGABLE AREA**, is used in an extended sense. It comprises all the oceans, and seas, and navigable lakes, and all inlets from them into the land, and all rivers flowing into them so far up as they are in their natural state navigable from their mouths, whether the water be salt or fresh. (Ang. 73 ; Hale 8.)

22. It is to be gauged at its full, at the level called high-water mark, as if it were, although it never can be, full to that mark all the world over at the same time. This mark we call the shore-line ; it is the ordinary high-water mark. In England it is fixed as a medium-line between spring and neap-tides throughout the year, including the equinoctial tides, but not any unusual tide due to accidental cause (Hale 12, 25, 26 ; *Blundell v. Catteral*, *Lowe v. Govett*, *Storer v. Freeman*, *Attorney-General v. Chambers*), whether indicated by the salt water alone or the elevation of the fresh water in rivers by reason of the rise of the sea ; a more reasonable scale than that of the furthest winter-wave. (Inst. II. i. 2, 4.) But the more proper limit would be the ordinary spring-tide, when unaffected by violent wind.

23. Its fresh-water domain is to be measured when the channel of the stream is ordinarily full,—neither in drought, nor in flood,—and extends to the furthest point to which it is navigable from its mouth.

24. This navigable area is subject to the marine law.

25. **THE STREAM, OR RIVER**, is water which flows perennially in a definite course—whether its progress be fast or slow in a continuous current, or delayed, or temporarily detained in pits, flats, pools, or lakes ; although its fountains are intermittent, or its bed occasionally exhausted by drought, or reduced to a nullah in certain seasons of the year ; although the channel is varied by the wanderings, altered by the avulsive, or changed by the invasive force of the flood—from its bursting out of the earth, shaping for itself a channel, or its

beginning to flow as the produce of collected rills to its absorption in the sea—rolling in tumultuous torrent, roaring down its falls, or gliding, slowly, silently along, it is a stream; but at the point to which it is navigable from its mouth it becomes subject to the marine, and ceases to be subject to the riparian law.

26. If it sink underground and pursue awhile a subterranean course, its underground channel is still subject to the riparian law. (*Dickinson v. Grand Junction.*)

27. The ostium fluminis comprehends the whole space between the lowest ebb and the mark of the highest flood. (*Horne v. Mackenzie, Kintore v. Forbes, Moray v. Gordon.*)

28. The stream is a distinct thing from the land over which it flows. (*Brown v. Best.*) It may be considered as the common property of the realm. No individual can appropriate it, or any branch of it. Were it otherwise, he might, by misapplication, lay a district waste. (*Linlithgow v. Elphinstone.*)

29. THE FOUNTAINS are the surface waters which have no definite course, pent in ponds, or little lakes, or winding down the declivities, among the rushes, the stones, or the grass, gushing up and diffusing themselves, or trickling over the brinks of the wells—the stagnant or slowly percolating waters, in swamps and spongy ground in the innumerable lacunæ and cavities of the earth; the hidden springs traversing the varied strata, changing their courses as a lower and a still lower exit may be found. For good and for evil they are bestowed upon the land. (*Broadbent v. Ramsbottom.*)

30. These fountain waters are private or proprietary and subject to the terrene law, the law of the land, alike with the minerals among which they lie enthralled, until they have emerged or escaped from their bondage and mingled with and acquired the brilliancy and freedom of the stream and the rights of the riparian law.

31. SEA-BED.—The soil beneath the sea, as we have described it, the oceans, the seas, and all their ramifications into

the land, up to the low-water mark, is the (fundus) bed of the sea. That mark, the margin of the sea at low-water, we call the *marine line or strand*.

32. **SEA-SHORE OR BEACH (Littus).**—The land which lies under the influent sea as the tide rises from the marine line to its mark at ordinary high water is the beach or sea-shore. (Lowe v. Govett.) That high-water mark we call the *shore-line*.

33. **RIVER-BED (Fundus).**—The ground subjacent to the navigable part of the fresh-water of the river in its ordinary state of fulness is the bed of the river, and its margin at that state is the *river-line*.

34. **RIVER-SHORE (Littus).**—The ground which lies between the river-line and the margin of the river at its highest state of fullness within the channel of the river, is the river-shore, and that upper line is the *river-shore line*.

35. **BANK (Ripa).**—All above the river-shore line is the *bank of the river*, as all above the sea-shore line is the *bank of the sea*.

36. The **SEA-SHORE** is in general distinguished from its adjacent bank by the presence of rock, shingle and sand, seaweeds or shells, and the absence of land plants, and unfitness for their cultivation.

37. The **RIVER-SHORE** is generally distinguished by bare rock, or gravel, or sand, mud, sedge, rushes, and other aquatic vegetation, unfitness for cultivation, and the absence of the plants which flourish on dry land.

38. **DISTRIBUTION OF JURISDICTION.**—It is important, for ascertaining and duly appreciating the various rights, to present to the mind a clear and distinct notion of the following principles and consequent laws.

39. In the bed of the open sea (or ocean) the land is entirely subject and subservient to the rights of the water, and to the marine, a branch of the aquatic law.

40. In the stream and on the sea and rivershores, the water is a distinct thing from the land over which it flows.

(Blundell v. Catterall.) (Best.) In these regions the land is subordinate, but not entirely subject, to the water; and consequently, when these laws and rights are in conflict, the aquatic laws and rights are paramount to those of the land.

41. In private lands, the region of fountains, surface-waters, and springs which do not flow in definite channels, the water is subject and subordinate to the proprietary rights of the land, and to the terrene law.

42. It may be convenient to describe that branch of the aquatic law which governs the sea, and prevails throughout the navigable area, as "the marine law," and the rights springing from it as "marine rights."

43. The mixed or combined action of the aquatic and terrene laws on the shore may be denominated the littoral law; and their co-ordinate operation in the stream may be designated the riparian or fluvial law. The rights derived from the former may be called littoral, and those arising from the latter riparian rights.

44. In all nations the natural laws are to some extent encroached upon by positive laws, or judicial decisions; conferring advantages on individuals in derogation more or less of the public right, and the enjoyment of it by the public at large.

45. **WATER RIGHTS.**—To ascertain the extent of the natural rights in the water, we must ascertain to what purposes it is applicable.

1st. Throughout the surface of its wide expanse and all its indentations, the sea is applicable to the passage of vessels, so far as nature has prepared the way; over this nature has given the right of passage, of navigation, and constituted it the navigable area, the great highway; and as he has for his vessel, so every man has for himself the right to swim, as a mode of passing, or to save himself, or to save others, or for his recreation, or his health.

2nd. All the inhabitants of the waters, and all the wild birds that hover over them, are given to those who can seize them for their moderate use.

3rd. The contents of the deep and of the shallower water down to the soil, the pure fresh element (drink for man and beast), the salts, the iodine, and other mineral components, the water-plants, and the weeds, are given for their respective purposes.

4th. The fertilizing power.

5th. The mechanical force.

6th. The use of the subjacent land to trade or travel on it as a natural highway.

46. **DISTRIBUTION OF RIGHTS.**—The rights are to be apportioned among the countries and their inhabitants, so that all may enjoy what is conveniently susceptible of common enjoyment; and that each country, as between the nations, and each person, as among the people of each nation, may have a preferable enjoyment of what is necessary for their peculiar want.

47. **THE SEA** and the navigable rivers, "the navigable area," constitute the surface for distribution among the nations. All nations are entitled to enjoy it so far as they may consistently with the security and especial exigencies of each; so that whatever is not appropriated to these necessities, in space or in specie, remains common to all.

48. **MARINE TERRITORY.**—There is a kind of possession of the borders of the sea, a portion of the water around the shore of every country, which the nations mutually admit and regard as a kind of marine territory, as part of the national waters of the country which it surrounds. The nations concede to each other an almost exclusive right to that space along the coast which they can defend by their cannon from the shore, estimated at, with some exceptions, a marine league, three geographical miles, from the coast-line; which, except in crossing indentations, follows the marine line, the water's edge, or the shore. The seaward boundary of this area we shall call the presidial line, and shall have hereafter to more particularly define.

49. This space from the shore to the presidial line is the

marine territory of the state, subject to its sovereignty and laws, as its streets and its highways. Its produce is dedicated to its exigencies. It is free to the peaceful merchant as the open sea; but its waves are not to be invaded by any unauthorized ship of war. No battle is to be done on its surface between belligerents who are in amity with that country; within its sanctuary they must observe the peace.

50. But the seas which divide some countries and frontier rivers are not of sufficient breadth to allow so much space to each from its shore. In such cases, the partition of the insufficient interval is indicated by a medium-line, which we call the mean-line, passing between them at an equal distance between the opposite shores.

51. The coast-line is, with reference to the presidial line, imaginary, as the presidial line always is. In general, the coast-line follows the shore of the sea, but it crosses each inlet. In the convention between France and England, of the 2nd of August, 1839, as to fishing, which was ratified and enforced by the 6 & 7 Vict. c. 79, the coast-line is fixed at low-water mark, except that in bays, the mouths of which do not exceed ten miles in width, it assumes a straight line from headland to headland, and the presidial line is measured and drawn at the distance of three geographical miles from the coast-line. In America (Angel, 2, 7; Wheaton, 234-5) a nearly similar rule is observed, and indeed, it may be regarded as generally accepted that bays or channels within the horns of promontories and headlands, however large, are subject to the sovereign of the neighbouring land.

52. OPEN SEA.—The rest of the sea is the ocean, the high or open sea; it is common to all nations, and the people of all nations; every vessel which traverses it is part of the country to which she belongs; all aboard her are subject to its laws: with some few conceded exceptions. The foreigner who voluntarily treads her deck must observe those laws in the same manner as if he entered a house within



the terrene dominions of her state. This is the result of necessity, for if not subject to, and protected by, the law of her own country, she would not be subject to, and she would not be protected by, the law of any other; she would be sent loose upon the ocean, released and excluded from the obligation and support of every law.

53. **SOVEREIGNTY OF THE SEA.**—Nations have from time to time affected and usurped a sovereignty over the sea. The titles of Chinese and other Oriental princes often comprised universal dominion, but more frequently through ignorance of the existence of competing power, than on any definite notion of authority beyond the national domain. The ancient empire of Egypt rarely attempted maritime enterprise; the Assyrian was in the heart of the land; and although the Persian demanded earth and water as the emblems of submission, he never attained a decisive superiority on the sea.

54. The pretensions to sovereignty of the little Mediterranean states, and the revival of such pretensions by Venice, Spain, Portugal, and England, will be cursorily noticed in another place.

55. **NATIONAL WATERS** are all the waters within the presidial line along the coasts of the nation, including its colonies, islands, and other possessions, such as fishing-banks, whether acquired by conquest or reddition, or appropriated by treaty between the nations interested in disputing the right.

56. Some of these waters, which form communications with the territories of other states, are for the purposes of navigation, subject to rights, to be hereafter explained, in derogation of the absolute sovereignty of the nation within whose territorial limits they lie.

57. **ENJOYMENT OF.**—The law which regulates the enjoyment of the national waters—is that the bounties of nature should be neither wasted nor misemployed; that they should be enjoyed as far as practicable in such manner as will conduce most to the benefit of the society, and confer advantage

on its allies. What is susceptible of enjoyment by all, should be dedicated to the use of all ; what is susceptible of enjoyment by many or several, should be applied to the use of as many as can conveniently enjoy ; and what is conveniently susceptible of enjoyment only in severalty, should be enjoyed only by those who have the power of acquiring it peaceably, and of improving it when acquired.

58. The national waters may, for the purpose of enjoyment, be regarded as divided or distributed into three districts :—

1st. *Public waters*.—The national navigable area from the presidial line to that of the shore, and the highest point to which the navigation up the rivers extends.

2nd. *Riparian waters*.—The portions of the rivers and the streams which are not navigable from the sea, or such great lakes as may be regarded as parts of the sea.

3rd. *Proprietary waters*.—The rain, the surface-waters, the fountains, and the springs which have not acquired the character of streams.

59. THE NATIONAL NAVIGABLE AREA (the public waters) is capable of enjoyment by all the subjects, and therefore they have a common right to enjoy it. This may also, under due restrictions for the security of the nation and its inhabitants, be enjoyed by the peoples of all friendly states ; and therefore, subject to those restrictions, friendly nations have a subordinate or passive right to enjoy it. On the other hand, those who reside in the immediate neighbourhood of particular portions of that area may have a preferable right of enjoyment for such purposes as their subsistence, and the satisfaction of their immediate wants.

60. THE RIPARIAN WATERS more especially belong to all who have a right to approach them. The riparian proprietor can enjoy the stream through the entire length of his bank ; the villager, where it flows through the land in which he has a common right ; the traveller, only where it is approachable on the public road. Even these rights are subject to the

public right; they cannot be so exercised as to render the water deleterious, or the channel mischievous to others, or less passable by migratory fish; and their rights among themselves are limited to the transient stream.

61. **THE PROPRIETARY WATERS**, or, rather, the unlimited use of them, belong to the owners of the land in which they lie.

62. **THE PUBLIC RIGHT** is to the water and for proper purposes in the subjacent soil. There may, however, obviously be benefits derived from the soil, susceptible of enjoyment by individuals, without prejudice or with little prejudice to the public rights.

63. For the purposes of protection and regulation, the public rights are vested in the Sovereign that they may be enjoyed by all the subjects of the realm. It is for the Sovereign to protect and vindicate them for the benefit alike of himself and his subjects; they are not his, he cannot alienate them. He has the dominion, but not the ownership, of the navigable rivers and the circumjacent sea. They are to be enjoyed by the individuals of the country free as the air which blows over them, or the highway on which they tread. (Schultz, Bracton, I. xii. 6; Blundell v. Catterall.) (Best.)

64. **DISTRIBUTION OF THE SUBJECT.**—Having considered the division of the area of the waters and subjacent soil, and the rights which may be enjoyed in each, it appears to be more convenient to exhibit the several subjects of those rights in a connected view, than to class them under heads descriptive of the places in which they may be exercised.

We shall therefore proceed to deal with the subject according to the following scheme :—

- I. Navigation.
- II. Fishing and Fowling.
- III. The Use of Water.
- IV. The Shore and Subaqueous Land.

## NAVIGATION.

"Heaven speed the canvas gallantly unfurled  
 To furnish and accommodate a world :  
 To give the pole the products of the sun,  
 And knit the unsocial climates into one."

*Couper.*

65. We propose to treat this interesting subject as it affects the use of the waters, and the incidents to that use ; and shall deal with the questions of peace and war, of merchandise and commercial action, of ports and other collateral subjects, only in so much as they affect the sailing upon the sea.

66. We shall first present to the reader a historical sketch of the progress of navigation, its machinery, and its laws, and then divide the treatise into navigation—(so far as we conveniently can, regarding its distribution into the open sea and national waters), (1) in peace,—(2) in war.

67. The sailing and punting about in streams not navigable from the ocean, or from such lakes as may be considered departments of it, may be enjoyed in the exercise of riparian or private rights, but do not fall within the proper meaning of the word navigation.

68. In treating of navigation in the open sea, and in the national waters, we shall have to consider not only the international laws by which the reciprocal conduct of the subjects of different states is regulated during the halcyon period of peace, but also during the storms and peril of war, as well as the observances prescribed by the municipal laws, especially of this country, for the conduct of its subjects towards its own government and towards each other.

## HISTORICAL SKETCH OF NAVIGATION.

69. States and cities are created, improved, enriched, and civilized by manufactures and commerce.

70. War and conquest are supposed to ennoble, but tend only to alter and destroy.

71. The history of commerce is far too extensive to admit even the lightest sketch in the pages of this book. The only portions of it which we can properly present to the reader's attention are the incidental exhibition of its wealth, and that only so far as it is connected with navigation.

72. Even the laws of commerce are beyond our subject, except such of them as relate to the reciprocal conduct of mariners on the great highway of the waters.

73. The only other subjects incident to this sketch are piracy and the slave-trade, of which a history would require volumes, and to which we refer only as among the dangers which the mariner encounters on the sea.

74. The delineation and progress of navigation will alone be treated in this sketch. The notices which it is convenient to take of the history of piracy will be partly exhibited with the law on that subject, and, from its affinity, included in the law of maritime war.

75. Commerce does not extend itself like conquest, in the pomp of its armaments and the clatter of arms. It is not commemorated in the lays of the poet or the songs of the bard. The historian does not record its tranquil events. It proceeds unobserved, it glides from isle to isle, and sails along the coast; it creeps round promontory after promontory, and

plants its civilizing factory from bay to bay. Its lays down its rude sea-chart, and corrects it by voyage after voyage. It speculates on the distance from point to point, and from time to time, when the weather is calm and the nights are clear, it adventures on a bolder reach, and dares across the solitary surface of the unbounded sea. So travelled the merchants of the Syrian colonists from their Spanish settlements to the British coasts. So, 2000 years afterwards, the hardy seamen of the Orkneys put forth for Iceland without compass, without chart, guided by speculation and the pole-star, and the flight of birds. At length the mystery of the magnet revealed itself, and stamped its index on the card.

76. THE ANTIQUITY of nations beyond the period of written history can be ascertained only from the state of their arts, institutions, and population when they became first known, with the explanation afforded by such of their monuments as have remained and been recorded in after times.

77. So long as all history was mythically circumscribed within a period of 2400 years before the Christian era and the progeny of a single family, it was necessary to restrict the dates, and reject every inconsistent myth. But history, as geology, has burst those narrow bounds. It is no longer possible to dispute the co-existence, and continuous existence as populous countries, of China, India, and Egypt, from a period long anterior to that date. They are not the only nations which produce irrefragable title to an ancient name. The region of Mesopotamia teeming with people, and the manufactures and commerce of Tyre authenticate the antiquity of nations in those regions beyond the prescribed term.

78. Why are we to believe the Achæan nation had no capital, and the Etruscan no existence, beyond a limit inconsistent with the arts, the monuments, the commerce, and the scattered notices of these realms?

79. Unroll the map 2800 years before the Christian era, and behold, in the extreme east, northward, China, a vast

population labouring on its canals and enormous artificial river-banks ; far to the south, India, with its fields of cotton and innumerable looms ; in the far west, Egypt, amid her stupendous pyramids and pompous palaces, seated on mounds elevated by the industry of the myriads who watch the rise and the subsidence of the Nile ; where the shore curves away from the mouths of that river eastward, Phœnician merchants and mariners are unloading the caravans, and preparing their vessels for the sea.

80. In the midst of the map, observe Babylon on both sides of a mighty stream, and further to the east the fire-temples of ancient Balk.

81. There are indistinct traces, in the ocean beyond China, of the islands of Japan. There are phantoms in the far west, beyond where the Mediterranean is almost embraced by two capes. There are dim tracks, as of vessels on the waters, which stretch to remotest Thule. In the north-west of Italy we can almost read the word Etruria. In the Corinthian Gulf and the Eastern Euxine names are coming into view.

82. Except where stood Babel and Balk, and except where temples are rising, and around them caravansaries and buildings to receive the annual or more frequent fairs, from China to Egypt, from India to the Northern Sea, all are nomades—Tartars, Arabs, Scythians, or Celts ; all ready to carry forward, in their periodical wanderings, what they might acquire by rapine or traffic to the temples on their several frontiers. The “camels without number” of the Midianites were not bred only to the milk-pail, or to furnish felt for the sable tents. The ships of the desert were employed before the ships of the sea. There appear tracks of the caravans like network over this vast area, but the broadest lines are from east to west, with a few ramifications as they proceed to the Syrian harbours, or further southward across the deserts to the Nile.

83. OF THE ANTIQUITY OF ORIENTAL COMMERCE we can

perceive no limit. Through the records of history we find in its machinery no change. The petty canoes and the larger vessels seem to have retained in all times a conventional type, consistent with their introduction soon after the waters became in any way subject to the dominion of man. Alike unaltered appear from the earliest ages to have been the routes of the caravans. Even in the legends of history the Eastern people first appear, in years to be counted back by thousands, multitudinous and industrious, possessing habits and arts which must have required years to be counted back by preceding thousands under the same or other governments for their acquisition, and institution, and increase. Commerce would long precede letters, and letters would long precede their application to history. The invention of letters, in the rudest form, was far in the rear of more necessary arts; their application to permanent writings required the invention of fit materials; the first scratching or engraving on stone is an occupation for leisure. The perfecting of an alphabet is the process of ages, yet that of the cuneiform letters of Mesopotamia was complete 2000 years before the date of the birth of Christ.

84. The CHINESE unquestionably employed vessels on their canals 2000 years before the date ascribed to the foundation of Rome, and may be presumed to have ventured in ships, of their present unalterable type, along the gulfs and islands which lie upon the northern, the then civilized portion of that ancient state. 2300 years before the Christian era, an inundation had broken and overflowed the banks of the mighty rivers of Cathay, and desolated its plains. A youthful engineer was employed to superintend the works of reparation. They were adapted not merely to the restriction of the rivers to their bounds, but to the protection of the country against a recurrence of the calamity, by dykes, mounds, and defences of enormous strength. The account of his labours was given to the emperor in the report of the engineer preserved in the Shoo-king. Some of



his works are religiously believed to be distinguishable among the vast constructions by which the ever-rising beds of those mighty streams are periodically held within their bounds. It was a national service, followed by a national reward; the engineer Yu was associated with and succeeded in his dignity the illustrious Shun; the empire was retained by him and his descendants for nearly 440 years.

85. Even if the statement that Hoang-Ti, one of the first of the Chinese emperors, possessed a chart which indicated the four cardinal points, is not to be accepted, we find indisputable evidence of the knowledge of the polarity of the needle, or rather of the direction of the magnetized bar, in China, in the reign of Tcheou-King, who, before the age of Solomon, upwards of a thousand years before the Christian era, presented to ambassadors leaving his court an instrument called Tchi-Nan (still the Chinese name for the compass), which pointed to the south, for the purpose of enabling them to return to their country by a more direct and certain route.

86. It is not improbable that the Chinese then navigated the sea with the same want of daring which affects them now, helped, as now, along the shores by a compass far more like that which we employ than the needle by which, according to Hugues de Bercy, the French mariner of the thirteenth century directed his course 2200 years after the reign of Tcheou. Another hundred years elapsed before the needle was placed in Europe upon a card.

87. The Chinese, from a period extending beyond the records of history, appear to have carried on an extensive trade on canals, and also a foreign trade to Japan, Manilla, and as far westward as Batavia, and to have communicated with the traders of Taprobane.

88. Their ships or junks rarely exceeded 250 or 300 tons, flat barks, seldom more than 80 feet in length. The forepart had no beak, but rose somewhat in the manner of two wings or horns. The stern was open in the middle to receive the rudder, and shelter it from the beating of the

waves. The rudder was four or five feet broad, and hung with ropes. They carried only two masts, with sometimes a small top-sail; the mainmast placed very near the foremast, which stood very forward upon the prow. The sails were made of mats of bamboo, divided into leaves and joined together horizontally with bamboo poles, folding like a screen. The anchors were of a hard and heavy wood, the flukes tipped with iron. The Chinese were accounted tolerable seamen and good coasters, but indifferent pilots in the main sea.

89. Before Britain was visited by the Phœnician, arts and sciences flourished in Cathay; and 3000 years afterwards, when Europe was again covered with darkness, all Asia owned the empire of him who reigned in the magnificent Cambalu.

90. JAPAN.—This populous and ancient empire stands aloof from the general history of the world. We hear of its station in ancient times only from Chinese accounts, and, among the earliest notices, of an ill-fated expedition from China to subjugate that then rich and populous realm. Its abundant population and its progress in the arts are corroborative of the ancientness of its institutions; and the resistance which it presented to the Chinese invaders is evidence of its power.

91. Long before the Christian era the emperor of China sent forth his armament to perish on the coasts of Yapangu.

92. In more modern times the Japanese invaded, with equally ill success, Korea, then subject to or in alliance with Cathay.

93. The commerce between Japan and China appears to have been considerable, and in articles of a character indicative of great progress in the useful and ornamental arts.

94. The Japanese shipping, though varying in particular forms, were of the same type as the Chinese.

95. In INDIA the Arabian merchants found arts, manufactures, and science, industry and commerce, already esta-

blished beyond the ken of historic vision. Its history is to be measured by the chiliads necessary to produce the civilization which then prevailed. The region in which the Grecian philosophers found the science, which they sought for their youthful country, established as of ancient time. A country in which Alexander on his inroad found among the ancient laws the rules of bottomry, to which, until the seventeenth century, commercial England had not attained. The country in which algebra and arithmetic first took their stand; sciences most needful to the merchant, which the Greeks and Romans never acquired.

96. But India possessed for its immense area and extensive seaboard few, and, for the most part, dangerous ports; more of them, however, adapted to the small craft of ancient commerce than to the huge shipping of modern times. So far as history enables us to see it, her character was rather that of an industrious and manufacturing nation, or assemblage of nations, furnishing her useful and gorgeous fabrics and other industrial products, to be exported by the caravans and shipping of other countries, than by ships and merchants of her own. Her agriculture supplied her internal wants, her industry provided for her comfort, and the superfluity of her industry procured for her luxuries and splendour, by exchanging its productions for the precious metals of the west, and the reputation of a land overflowing with silver and gold.

97. A coasting trade and a coasting piracy appear to have been carried on by a seaboard race similar to, or the same as, that of the Malays, scattered along the shores and the islands from Scinde to the furthest east. Their ships, in all probability, differed little from those which still traffic in or infest the Indian Ocean. From the proa almost down to the catamaran, although the variety is considerable, there is a general similarity of type.

98. The proa is straight fore and aft, that is, has two bows, to sail in either direction, formed of pieces bound or

sewed together with ropes of coir, made from the fibres of the outer covering of the cocoa-nut; generally with one lateen, an almost triangular sail, made of matting; the mast, yard, and boom of bamboo; with an outrigger on the windward side, occasionally an outrigger on each side, made of the hollow bamboo sometimes in the form of a canoe.

99. **TAPROBANE—SERENDIB—CEYLON.**—This island, rich and powerful when first heard of by the commanders of Alexander, and of the magnificence and opulence of which so tempting an account was brought by its ambassadors to the Emperor Claudius, was, between a thousand and two thousand years before the former of these periods, the chief entrepôt of the commerce between the Eastern merchants and the navigators from the Persian Gulf, and those from the Red Sea shores. Of its population and wealth, the still extant ruins of its enormous tanks for domestic and agricultural purposes afford evidence incontrovertible beyond that of the written page. But its inhabitants, like those of India, seem to have confined their own traffic to the coasts, and to have received the imports from China, the Persian Gulf, and the Erythræan Sea, and to have sold the products of its industry to merchants more adventurous than themselves. Their island was the great entrepôt of merchants, but theirs appears to have been almost entirely a passive trade.

100. **SOUTH SEA ISLANDS.**—They are all in the dark. How were they peopled? By what long voyages and desperate expeditions or strange accidents were they reached? Isolated from each other to a vast extent; according to the degree of isolation, the habits first imported remained unchanged. Of their nautical progress the periagua is the type, the war-ship of New Zealand and the Southern Sea. It consists of two canoes scooped out of trees, and united together by a deck, which reaches from one to the other, so that it cannot turn over or sink.

101. **SABÆANS.**—In the most remote periods of which the historian can obtain a glimpse, the Homerites along the coasts

of Yemen, Arabia Felix, constituted a commercial state, happy, prosperous, and powerful, rather from its industry and maritime enterprise, than from the balms and fragrant odours which perfumed the land. Their ships sailed to the mouths of the Ganges, and transported the products of India and Ceylon to the ports of the Erythræan Sea, the emporia of a traffic to be thence diffused along the Nile and among the dwellers on the Mediterranean coasts. In time they, too, must march forth as an invading nation to the limits, where Carthage was afterwards built on the north-west, and, in alliance perhaps with the King of Nineveh, to the frontiers of Persia, Turkestan, or India on the east. Then they called their capital Saba, the victorious, and from that time gradually tended to decay. Protected from Oriental as afterwards from Roman invasions by the desert, they ever retained some power; but when Israel was at its point of culmination, when the Queen of Sheba visited, and, as some say, became the wife of Solomon, the Sabæan dominion had declined. Arabian mariners have, however, in all time maintained a reputation for enterprise and extensive voyaging by sea.

102. But the glory of Sheba has departed. Villages occupy the sites of the Homerite cities, and Aden is a coal-depôt for the steamers of the descendants of those whom her forefathers deemed barbarians of the western seas. Yet behold, traversing in every direction over the barren sands, hosts of camels, countless caravans, from all the borders of Islam, swarming to the Kebla, the sacred tomb of one of the greatest of the sons of men; from Russia, from Siberia, from China, from India, from Istamboul, from Syria, from Egypt, from Africa, they come,—they come; in thousands and tens of thousands the pilgrim merchants are crowding over the arid wastes to their devotions and to their trade; Mecca holds her religious festival, and summons the faithful to her fair.

103. MUSCAT.—On the north-eastern coasts, on the margin

of the Persian Gulf, once stood towns which almost rivalled the fame of Sabæa, which received like her the spices and the merchandise of Serendib and Hindostan, and by the camels of Midian and Moab and Idumæa conveyed them to Petra, the empress of the rocks, on their destinations to Egypt, Phœnicia, and the furthest west. There, near where the promontory of Oman divides the gulf, in the midst of rude rocks and breakers, surrounded by desolation, founded in piracy and nurtured in blood, has sprung up a representative of the ancient Arabian fame. In her cavernous recess, among pinnacled cliffs and ragged precipices, and on the rugged islets of her loch, amidst frowning batteries and busy docks, sits Muscat; her ships are bearing the ivory of Africa, the spices and merchandise of India, and the opulence of Europe to her feet.

104. THE EGYPTIANS of Memphis, 3500 years before the Christian era, and centuries before that period the Egyptians of Thebes, navigated the bounteous Nile. Their river was their great highway, and during no inconsiderable portion of the year its northern regions were a wide expanse of water, dotted with towns and villages extending to the sea. They drew a material portion of their sustenance from those waters, which irrigated their land. They traversed them in boats of respectable dimensions and occasionally of enormous magnitude, as well as in boats of wicker and reeds, and on bladders and bottles, and bundles and logs of wood.

105. A ship was the religious emblem of Egypt. The ordinary river-craft were generally flat-bottomed or provided with a very shallow keel, on account of the ever-varying shoals and banks of sand. They were impelled and furnished, even the fishing-boats, with sails and oars. They had cabins and compartments, often spacious; some gorgeously furnished for princes and passengers, others adapted to cattle and stores; some of large size for commerce. The sails were of reed, like the Chinese, or of linen from the Egyptian loom, generally square, with a yard above and below.


106. On the coasts of the Red Sea, and occasionally on the Mediterranean, they fitted out vessels of war—some of considerable dimensions; but the Egyptians were not a seafaring race.

107. More than 1300 years before the Christian era, Ramses Miamoun the victorious indulged, in anticipation of the Ptolemies, in the building of a monstrous ship, rather a palace than a thing of use. This structure was chiefly formed of cedar, 420 feet in length and 72 feet from the keel to the top of the poop, probably based on a double vessel—an enormous paragua.

108. They delighted in various and gaudy colours, not only in the body of the vessel, but in the sails; and each exhibited on its standard a device, a phoenix or a sphinx, or some other emblem of royalty or religion, sometimes on the long projected pole of the rudder, sometimes at the head of the ship.

109. The Israelites might have found in Egypt models for their ark, not only in the religious ceremonies, but on the waters of the Nile.

110. About (1350–1345 B.C.) a century and a half after the exode of the Israelites, and while they were endeavouring to rescue themselves from slavery under Moab, Sesostris (Ramses Miamoun) commenced his career of conquest, the greatest which Egypt achieved. His army is represented as having consisted of 600,000 infantry, 24,000 horse, and 27,000 chariots, and his navy of 400 ships. He is said, at about the same time, to have sent as many ships with linen sails to India. His conquests are said to have comprised Arabia, India, Bactria, Persia, Cappadocia, and Colchis on the Phasis, the last of which he colonized; and it is said that evidence of his colonization remained, in the swarthy skins and woolly hair and traces of the Egyptian language among the inhabitants, to the time of the first historian of Greece. He left there also maps, engraved on pillars of brass; the first traces of the delineation of the earth of which



we are informed, but copied perhaps from those in the Egyptian archives, whence Moses may have derived, if he wrote it, the description of the nations of the earth.

111. During one short period afterwards the Pharaohs held the dominion of the eastern part of the Mediterranean Sea.

112. But their ships were probably manned with Phœnician mariners, those from the coast of Asia Minor, Arabia, and the isles of Cyprus and Crete, for the Egyptians abhorred the sea. The river and its commerce were their own, but they dreaded the ocean and all who traversed it; and as the habit of those who frequented their northern coasts much resembled that of the ancient Saxons and Danes, as we find from the exploits of Menelaus, who gloried in the atrocities of the buccaneer, we need not feel surprised at the Pharaohs restricting commerce for the most part to a single port. Naucratis was built and chiefly inhabited by Greeks.

113. But the Egyptians were considerable manufacturers, and through other nations carried on an extensive trade. The catalogue of their productions would exceed the dimensions of this book. They were a sumptuous and luxurious nation; their temples and their palaces were vast and gorgeously adorned; and in these adornments we read the history of their progress, and the description of their productions, their manufactures, and their arts. In the colossal works of the architect and the sculptor, in the manipulations of gold and of silver, and of bronze and of tin, the precious and the useful metals alike; in the most beautiful varieties of glass, in fine linen and in paper, and infinite works of industry, the Egyptians excelled. They exported the produce of this industry for the raw material which they required. The statues of their ancient monarchs were wrought with chisels fabricated from British tin mixed with copper, possibly from the Cornish, more probably from the Spanish mines.

114. They participated in the traffic of the Sabæans with India and Taprobane, from the neighbourhood of their fron-




tier on the Red Sea. They derived the products of the East, which came by land and the Persian Gulf, by the caravans through Damascus and Petra, and the produce of the West by ships and caravans from the Phœnician ports.

115. And although they dreaded the sea and the piratical ships which swarmed upon it, the Pharaohs were the patrons of maritime enterprise and discovery. It was under them that the Phœnician expedition circumnavigated Africa, sailing by the Erythræan, doubling the Cape of Good Hope, and returning through the Pillars of Hercules to their port in the Mediterranean Sea. This disputed but indubitable event occurred in the reign, and under the auspices, of Necho, 610 years before the Christian era, while Cyaxares was driving back the Scythians, and the Phocæans were fitting out their expedition for the founding of Marseilles.

116. The same Necho renewed the attempt, which had been first made by Sesostris, to unite by a canal the Erythræan with the Mediterranean Sea.

117. Engineers, with skill and appliances and powers unknown to the Pharaohs, have resumed in a different direction the difficult, if not desperate, undertaking. Ptolemy indirectly accomplished the object to some extent. The iron-road has attained most of the purposes for which the canal was required.

118. The commerce of Egypt on the Red Sea was conducted chiefly by the Arabians of her own and the opposite coasts. Her commerce on the Mediterranean was conducted chiefly by the Phœnician and the Greek. It was with their forces that she temporarily exercised dominion over the neighbouring portion of the Mediterranean Sea. Each was alternately her enemy or her ally. After the foundation of Naucratis by the Milesians, about the time of Necho, in the Canopic mouth of the Nile, with an independence of the sovereign government, such as a great Hanse town in after ages enjoyed, the Phœnicians were to a considerable extent excluded from the Egyptian coasts.



119. Egypt did not enter largely upon maritime expeditions with her own ships until the Pharaohs had passed away, and a new conqueror founded in her western limits a city of his own name, to supplant the honour of immolated Tyre.

120. With Alexandria, a new era began in the commerce of Egypt. She had fallen under the rule of the Greek, and her subsequent history will be considered in another page.


121. PHŒNICIA.—On the rocky shores of Phœnicia, in her harbours, on her islets from north to south, there are cities and manufacturing towns, and the sounds of commerce and the gathering of ships. In ancient Tyre stands the temple of Melkarth, 2700 before the era of Christ. The merchants are busy at Sidon. In the wide extent behind them, from the sea to Euphrates, nomade tribes wander over the deserts and the plains. Here and there are scattered the strongholds or little cities of hordes beginning to settle, and to combine agriculture with the commerce of the caravans. In the mountains are the remnants of an earlier population, levying black-mail and retribution on those who had expelled them from their plains. Far southward, amid the rocks of Idumæa, are the beginnings of a commercial state. They are all kindred races in different stages of civilization; all are occupied in carrying forward or in levying contributions on the natural and artificial productions of the East. The meleks, and the emirs, and the sheikhs rule their petty communities, except when some turbulent leader arises to subdue a neighbouring clan, or to summon the warriors to some common exploit.

122. The people of Lebanon and of Idumæa, the inhabitants of the mountains and the plains, of all the regions of Syria, are moving, and the people of the desert are with them. A mighty chieftain has called them to conquest; the Phœnicians, the shepherds, the Hyksos have swarmed across the river of Egypt (B. C. 2000), and spread over and desolated that ancient realm. The rulers of Tanis, Bubastis, and Sais, the princes of Memphis and the Fayoum, the Xoite

kings, and the Diospolitan kings are fleeing or retiring before them. For nearly five hundred years they occupy the sea-coasts and large portions of the land, and contend for dominion with the Pharaohs of Egypt. The leadership is with the ruler of Avaris (Pelusium), the rallying point of the tribes; but the petty princes, especially of the maritime cities, were almost independent of the chief. Their power began (B.C. 1700) to decline, and during about 150 years they were gradually driven from the Nile northward and eastward, until (B.C. 1550) Avaris was taken and they were expelled, and the conquerors doubtless pursued them into their ancient homes.

123. During this period, then, from about B.C. 2000 to B.C. 1550—for computations can only be speculatively approximate—the rule of Phœnicians or peoples of a kindred race extended almost along the whole northern coast of Egypt, the whole coast of Syria, and the coast of Asia Minor, perhaps as far as Rhodes; and that island with Crete and Cyprus were under the influence of Phœnician habits and sentiments, the love of commerce by land and by sea.

124. The routes of commerce have little change. Subject to the growth and decay of cities and temples, its usual emporia, and to the interruptions and devastations of plunder and war, they may be faintly traced from Cathay, by the desert of Cobi, through the passes of the Himalaya and its subordinate ranges, by the rivers of Tartary, and over the plains of Turkistan, by the marts of Samarcand, of Bokhara and Balk, to the Euphrates and Chaldæa, where the mighty Babylon received the caravans, and where it received too a portion of the imports of the Persian Gulf. A portion passed thence across the desert to Petra; but the great convoys to the maritime cities traversed the desert, where Palmyra the stately, and Damascus the beautiful, afterwards arose, and proceeded to the harbours of the Sidonian coasts. Such was their progress centuries before Joseph was bought and sold.



125. Soon after the Hyksos had been driven back in defeat upon the regions of Canaan, another expulsion occurred. The children of Israel, and probably some kindred families, had, during the Hyksian domination, been permitted to settle in a pastoral district of one or two thousand square miles to the north or north-west of the head of the Heroopolitan Gulf, the western horn of the Red Sea. After the martial race which had held Avaris was driven out, the people of Goshen were allowed to retain a precarious possession of their pastures; but the superfluous population were employed and exposed to the hardships of slavery in building a fortress at each extremity of their district to keep them in subjection, and to restore or replace the ancient monuments, which their compatriots had defaced or destroyed. They were oppressed, and became, as their descendants ever were, an impatient and rebellious people.

126. With what atrocities on their part, which are faintly indicated by the marks on the door and the slaughter of the first-born, and with what violence on the part of the oppressors, cannot now be discovered; they were driven by the ancient well-known route of the caravan into Arabia (B.C. 1490), and after being repulsed in an attempt to penetrate into Canaan on the south-west, skirted the commercial district of Idumæa, and assailed the towns on the eastern part of that province of Phœnicia, which afterwards acquired the name of Palestine.

127. They brought with them the laws of Egypt, with an edict of extermination and the other bloody additions deemed requisite by a half-savage horde to make good its conquest against a people better disciplined and more numerous and civilized than themselves.

128. They brought moreover with them, and, from their exclusiveness, better preserved, a notion, somewhat more distinct than among other peoples, of a single God, yet only the notion of a tutelary national divinity resting in their shrine, personally pronouncing oracles through the priest;

a notion disturbed also by vague associations of angels, of spirits, and ghosts.

129. Their poets, like the philosophers of Egypt and Greece, had higher conceptions of the Deity, and described His attributes in a loftier strain.


130. After between 300 and 400 years of alternate victory and defeat, of tyranny and subjugation and doubtful conflict, they captured Jerusalem, a city already sacred in that land, and made it their capital; and, under the banner of the ill-requited Joab, extended their dominion or their influence to Tadmor in the north-eastern desert, where the superb ruins of Palmyra now stand, to the neighbourhood of the Sidonian cities on the coast, and to the eastern horn of the Red Sea on the south.

131. In the reigns of the priest-ridden David and his pedantic and luxurious son, they imported some peacocks, some apes, and some gold. But so destitute were they of the arts of civilization and commerce, that their temple, and its holy of holies, its cherubim and its seraphim, and its fantastical ornaments, were built and modeled by workmen from ancient Tyre; and the very gold entombed within it, for the gratification of the priests, was imported by ships and seamen hired from Tarsus, or Tarshish, whence the fabulous voyage from Ezion-geber to Tartessus in Spain.

132. From that time wholly or partially dependent on Egypt, on Nineveh or Babylon, as the tide of battle rolled forward and backward between Euphrates and the Nile, occasionally rebelling against either master through the ambition of its priests; its commerce was represented by fishing-boats on Gennesareth, and by the fable of Jonah on the sea.

133. From about B.C. 1100 to about B.C. 1020, the contest was carried on between the invading Israelites and the maritime cities of the south coasts, the Philistines, and their civilization and commerce were at length almost exterminated and destroyed.

134. During this period the kingdom of Damascus or



Syria was growing up, which spread its dominion over a considerable portion of the country north of Palestine, and probably pressed upon the people of the sea-coasts. It lasted from B.C. 1030 about 300 years, until B.C. 738, when it was overturned by the Assyrian power, sixteen years before the Israelite kingdom of Samaria (B.C. 721) was destroyed.

135. We have referred to these events as indicative of the circumstances under which the early voyages and emigrations from the Syrian coasts occurred.

136. The earliest colonizations from Phœnicia are recorded in no tablets of brass, in no pillars of marble, in no written book ; but they were indelibly engraved on the manners and habits, and abundantly illustrated by the wealth and happiness of the peoples among whom they were introduced. The opulence of Sidon and Tyre, and the other cities on the seaboard of Syria and Philistia to the river of Egypt on the south, and towards and along the south shores of Asia Minor, beyond Tarsus or Tarshish on the north, and inland beyond where Damascus now stands, and in the regions now desolate beyond Jordan, where numberless cities once stood, and their indestructible houses still remain, attest the power and splendour which Phœnicia once enjoyed.

137. The appetite for war exhibited in the conquest of Egypt may have led to disasters after the Hyksian armies were driven back ; but the first record of her decline is in the invasion by the Israelitish tribes.

138. The sea was her realm. Of all nations she alone sent forth peace and goodwill, and distributed wealth and prosperity over the waters, to thrive and flourish in the islands and on the adjacent shores. She conquered with arts, and conferred on the vanquished, with whom her children became blended, civilization, protection, and peace. She did not impose on the countries into which her children went to reside the obligation of allegiance, but the bonds of friendship and gratitude ; and attached them by mutual benefits and reciprocating wealth. They turned the wastes

into a paradise. The Assyrian, the Babylonian, the Persian, the Macedonian, and the Roman conquered by arms, and reconverted the paradise into a waste.

139. Colonies which emanated from Phœnicia became the centres of further civilization. The daughters of Tyre became the mothers and grandmothers of prosperous races, and spread civilization far and wide.

140. CYPRUS, Chittim, Paphos.—Macaria the happy lies near and immediately opposite the Phœnician coasts. The birth-place of Aphrodite was the first insular colony which came under the dominion of Melkarth and the Phœnician ships. More than 2000 years before the Christian era at least, they civilized this land of forests, and peopled it with that beautiful and stately race, the mothers of the haughty Carthaginian and Tartessian, the grandmothers of the Cassiteridan dames. Cyprus became part of Phœnicia, rich in commerce and ships. It never attained a permanent independent existence. It fell sometimes with and sometimes apart from its parent state under the dominion of the Egyptian, the Greek, the Persian, and the Macedonian, and in after times it became subject to the Roman, the Saracen, and the Crusader. It enjoyed a sort of independence and some prosperity and power for about three centuries, and then relapsed under the Mohammedan rule.

141. CRETE.—Long before the reign of Minos or Rhadamanthus Phœnicians had laid the foundations of the prosperity of Crete. They subjected it not to vassalage, but to the regulations of commerce and the dominion of law. They became blended with the natives and infused into its people the tastes and sentiments of a civilized nation, impressed them with the obligations of friendship, but left them to govern themselves. Crete is styled by Aristotle "the Empress of the Sea."

142. "Of the commercial efforts of the Cretans little or nothing is known. Castor Rhodius, as copied by Eusebius, has ascribed to them the honour of being the first who held

the dominion of the sea. But we must be careful not to affix modern ideas to ancient terms. This boasted dominion of the sea extended only to the suppression of the Carians and some other pirates who infested the coasts, by a naval force fitted out by Minos, the second king of that name in Crete, an expedition made by him to Athens in revenge for the murder of his son, on which occasion he subjected the Athenians to very humiliating conditions of peace; and another to Sicily, in which he lost his life." (Macpherson, an. 1234 B.C.)

143. Crete does not appear to have formed one of the great centres of colonization, though Miletus, the mother of many colonies, partially issued from her, and although she contributed to the Phœnicio-Hellenic settlements in the south of Sicily. She enjoyed a considerable commerce and at all times a respectable marine force. Till the time of the Romans, she, to a great extent, preserved her independence from external powers, at first under a regal and afterwards under a republican rule in general, but was too much disturbed by internal discord to direct her attention to the propagation of colonies abroad.

144. RHODES.—From Cyprus the tide of commerce flowed on to Rhodes, fertilizing the sea-coasts as it flowed. It wafted into this celebrated colony the institutions which took root and flourished there. This little island gave few colonies to commerce, but it preserved and concentrated its laws, and performed a part more important than any other Phœnician or Grecian state.

145. This prudent nation appears to have devoted herself rather to the mercantile than to the military marine, although described by Homer as the haughty Rhodians, on whom the son of Saturn had poured down incalculable wealth. She sent only nine ships to the Trojan war.

146. The testimony of Homer is testimony of the extent of her trade, for her small area precludes the acquisition of great wealth from any other source.

147. Her principal contribution to the establishment of



colonies appears to have been in conjunction with Crete. From these celebrated islands emigrants went forth to Miletus, and probably some other towns on the Ionian, and to Gela on the Sicilian, coast. She seems to have established some, but we are unable to ascertain what, colonies in the far west of the Mediterranean, probably in connection with the Phœnicians or their allies of Crete. (Strabo i. 57; Justin xxx. 4.)

148. The commercial ordinances of Rhodes, derived perhaps from her Phœnician progenitors, established themselves among the codes of imperial Rome, and laid the foundations of the mediæval and still accepted rules of the sea. This little state still reigns the only recognized ruler of oceans which she never knew; to the Atlantic and Pacific she has given the law.

149. Of those laws one portion is distinctly adopted in the fourteenth book of the digest which contains the Roman institutions as to the conduct and contracts of the mariner and owner of the ship. That portion is entitled "*De Lege Rhodia de Jactu*," and forms the second title of the book. It contains most precise provisions for the contribution of all interested in the vessel and her cargo in case of injury and loss; many with regard to conduct and the remuneration of those employed in assisting to save the cargo, and distinctly declares that there is no relinquishment of property in throwing it overboard to lighten the ship. The provisions are too extensive to admit of even an abstract in such a work as this, and moreover indicate that they constitute a portion only of the law of Rhodes. Probably many of the other provisions were derived from the same source, and the Rhodian law is declared to have been sanctioned by two of the greatest emperors of Rome. "*Deprecatio Eudæmonis Nicomediensis ad Antoninum Imperatorem. Domine Imperator Antonine, naufragium in Italia facientes, direpti sumus à Publicanis, Cyclades insulas habitantibus. Respondit Antoninus Eudæmoni: Ego quidem mundi dominus; lex autem maris, lege id Rhodia, quæ de rebus nauticis præscripta*

est, judicetur : quatenus nulla nostrarum legum adversatur. Hoc idem Divus quoque Augustus judicavit."

150. It is not to be assumed that the Rhodian laws were the enactments or institutions of any sovereign power, although the Rhodians were the third or fourth of the states to which, in the catalogue or chronological list prepared by Castor Rhodius, has been ascribed the sovereignty of the sea. On the other hand, there is reason to believe that in the time of the maritime ascendancy of this little state, some Rhodian merchant, or lawyer, or association, collected and digested such of the rules and regulations which then prevailed as were deemed most convenient for the regulation of their commercial affairs; regulations which had been previously extensively accepted, and from being so adopted had obtained that authority which constituted the only real sovereignty that ever existed in the Mediterranean Sea. We shall have casually to refer to the influence which they in after times exerted over all Europe, and almost the whole world.

151. The Rhodians moreover set the first example of a small neutral nation valiantly asserting its rights (B.C. 304). Antigonus demanded their assistance against Ptolemy, which they refused; he blockaded their port, and prohibited commerce with Egypt. The Rhodians assumed an armed neutrality, sent their ships under convoy, beat off those of Antigonus, and conveyed their cargoes to the Egyptian ports. The enraged belligerent strained his strength, collected his navy, and gathered the pirates of the Mediterranean against the assertor of the law; but the engines of the famous Demetrius became the prize of the Rhodians. The product of their sale constructed the Apollo, 105 feet in height, for future centuries, to light their fleets into their harbour, and to stand a monument of the successful vindication of neutral rights.

152. GREECE.—Northward by the Sporades, the Cyclades, and the islands of the *Ægean*, touching at Argolis, at Athens and *Bœotia*, at Miletus, and on Thrace, laving either shore

in its course, the tide of civilization from Phœnicia and her earlier colonies flowed on through the Hellespont and Propontis into and along each coast of the Euxine Sea.

153. The Egyptian provinces of the Mediterranean were still held by the Phœnician or Hyksos princes when Ogyges led the first recorded migration (B.C. 1586) into Greece, and laid the foundation of the Bœotian and Athenian States : about the time of the expulsion of the shepherds from Avaris, their last stronghold (B.C. 1550). Cecrops, a native of Saïs, perhaps an expelled Hyksos prince, arrived in Attica with another band; erected the city of Minerva and her sacred fane.

154. Within fifty years (1500), Danaus, described as brother of an Egyptian king, just at the time of the expulsion of the Hebrews, with his followers settled in Argolis, and dethroned the ancient dynasty of the Peloponnese.

155. COLCHIS, in the extreme east of the Euxine, where its capital *Æa* arose on the banks of the Phasis, the river of pheasants, had become an emporium for the merchandise of the Orient and the South. Thither, through the civilized regions of Bactria, Media, and Mesopotamia, and the ruder country of Armenia, commerce, issuing from India and the far East, wound its weary way, subject to the vicissitudes of alteration, substitution, increase, or diminution, by purchases, by sales, by barter, taxation, and pillage on the way, passing through various hands, and means of conveyance, commodities reached the mart of Colchis to be distributed along the southern coasts of the Euxine, behind which the Dardan realm had risen, and the provinces preparing to form the Lydian empire were spread.

156. Nor is it improbable that even the rude Taurics and inhabitants further north purchased the fineries of Samarcand and Ind with the metals, the amber, and raw commodities of their own and neighbouring regions.

157. Egypt had heard of its wealth, and while the Israelite invaders on the eastern borders of Palestine were in

anarchy, or in servitude to the Mesopotamian king, Sesostris (Rameses Miamoun) (1340 B.C.) marched through the lands of the Phœnicians, and carried his arms to Colchis, and planted a colony there.

158. The artisans were Egyptians, but the Phœnicians furnished mariners and ships. Tyre and Colchis were exporters for the oriental caravans. They had no trade for each other, and no inducement to maintain an intercourse by long voyages in a dangerous sea.

159. TYRE.—Perhaps owing to the growing power of the Israelites, perhaps to civil dissensions, perhaps to the exuberance of the population in a wealthy and well-governed state, perhaps to the adventurous spirit of commerce, or sometimes to one, sometimes to another, and sometimes to a combination of these causes, the emigrations from Tyre and Sidon and all the Phœnician coasts became fast and frequent to the Grecian and Libyan, and the Sicilian shores.

160. About 1300 B.C., Cadmus, the Phœnician, landed, introduced discipline, and arts, and letters, and planted Boeotian Thebes.

161. The strongest stream of Phœnician commerce and civilization had set westward upon Malta and Sicily, Sardinia, the Balearic islands, upon Africa and Spain. The temple of Melkarth was erected at Carteia, or Heracleia, near the Pillars of Melkarth (Hercules) in the impenetrable antiquity of time.

162. Traffic, and small establishments for traffic, preceded colonization on a large scale. Factories grew into villages, and villages into towns. Centuries elapsed between the first commercial settlement and the establishment of the colony as a place of magnitude or rank. The foundation of cities long precedes their history, except when they arise from peculiar circumstances, sufficiently manifest to fix an unquestionable date.

163. The pressure which had induced the expeditions to Greece, especially that of Cadmus (in B.C. 1300), appears to

have increased ; and about sixty years after the Trojan war (B.C. 1124) Gades (replaced by Cadiz) is said to have been founded beyond the Pillars of Hercules, on the coast of Spain, and shortly afterwards (B.C. 1104) Utica in Africa, near which the magnificent Carthage within a few years arose.

164. It is probable that the various dates ascribed to these colonies are due rather to the times at which their greatness or a considerable increase of population first attracted attention, than to their beginning to exist. It is not improbable that the conquests of the Israelites in Palestine about this period occasioned the departure of many of the inhabitants of the Philistine towns, to the more secure settlements of their fellow-countrymen beyond the sea, rather than in search of new settlements in unknown lands.

165. In fact, the date ascribed to the foundation of Utica seems to be due to the increase of her population, and the erecting of a magnificent temple to Melkarth ; the cedar beams of which, from the mountains of Lebanon, were found undecayed and uninjured after the lapse of between eleven and twelve hundred years.

166. All these settlements from Phœnicia were the centres and the mothers of settlements, to which new colonies were still going forth from the native land. Cyprus, Crete, Miletus, Athens and many Grecian cities, alike with Gades and Carthage, Carteia, and even Colchis, must be regarded as descendants from the Phœnician stock, so far as their commerce and aptitude to navigation are concerned. We propose to present a short sketch of each of them with their progeny in turn.

167. But two nations, Etruria and Sicily, claim previous attention, as unconnected or less connected with the settlements from the Syrian shores.

168. ETRURIA.—In the north of Italy there is a rich and flourishing people, of Pelasgic origin ; their cities are sumptuous, their ships are many, although their ports are few. From the impenetrable antiquity of time they have held do-

minion over the Tyrrhene Sea. The multitude and magnificence of their towns and their burying-places, the splendour and the decoration of their houses and their tombs, the elegance of their arts, and the greatness of their opulence are better evidenced than by any history in the remnants of their grandeur with which their country is still thickly strewed.

169. To industry in manufactures, and to an extensive commerce, reaching to Egypt at least, and afterwards to the Cathaginian shores (we cannot measure the bounds), their wealth and prosperity are due.

170. Until the Latins and the Gauls trenched upon them, her territories extended far beyond the limits to which in the time of Romulus they had been reduced. Among her cities was primeval Rome, rich and powerful, drained and protected from inundation by those vast sewers, over the ruins of which the Latins built their huts, and Romulus and his successors unconsciously erected the little town, the germ of the victorious city which was to become the empress of the world. At the mouth of the Tiber was built, and sustained at an enormous cost, Ostia, the port of that primeval Rome.

171. But before the page of history was opened, her power and her pride had departed, and the Etruscan state was tending to disruption and decay. The rest of her tale is written like that of Carthage, in the malignity of her foes. And even modern historians have lent such credence to the calumny, as to describe the only merchants of Italy as pirates, while eulogizing the marauding Greeks.

172. SICYON.—Almost coeval with the commencement of the Tuscan, we see seated upwards of 2000 years before the Christian era, in the Gulf of Corinth, Sicyon, the capital of another Pelasgic state, which maintained itself in commerce and power for a thousand years, until it fell under the sway of Agamemnon, and perished under the Heraclidæ on their invasion of the Peloponnese.

173. Whence were the Pelasgians? They were spread over Greece, they were spread over Italy, and they, or kindred peoples, occupied the regions on the north. Whether ships from Tyre or Syria had introduced commerce or colonies into the Sicyonian Bay, is as doubtful as whether Etruria derived her maritime education from that source.

174. Industrious nations necessarily traded with each other; their wealth grew from commerce, and the production and interchange of the results of energy and art; and from combinations of the same sources civilization arose and spread.

175. Long before the historical settlements in Magna Græcia, Pelasgians had migrated from Greece to the opposite coasts, and the position and power of Sicyonia would indicate that some at least of the migrations were from thence. The settlements of those emigrants were not permanent; they seem to have been driven back upon their native shores.

176. ARGONAUTS.—Less than a century before the Trojan war, an exiled son of the King of Thebes had fled for protection to his relative, the King of Colchis, at *Æea*, the capital of the realm.

177. It is not necessary to imagine that the golden ram on which he and his sister fled was a vessel with a figure-head; the relationship which induced the flight indicates an intimate connection as pre-existing between the descendant of Cadmus and the Colchian kings, and at least that both were connected with the Phœnician race. As Cadmus had come with a fleet from Tyre, even Bœotians could not have been ignorant of the shape and use of a ship.

178. To avenge the murder of the fugitive prince, unless it should be atoned by the delivery of the golden fleece, the confederated chieftains of Hellas fitted out their first-recorded naval expedition, destined to the Colchian coast. It was perhaps symbolized by some sculptor, who, for want of room, crowded the heroes into a single ship, and the Argo

became mythologically the first of her race. Macpherson derives her names from *arco*, the Phœnician word for a ship of war, as distinguished from *golin*, a merchant vessel.

179. Notwithstanding its fabulous form, no doubt can reasonably be entertained that such an expedition went forth; and as the sons and grandsons of the companions of Jason led ships by hundreds and men by thousands, within forty or fifty years afterwards, to the Trojan war, there can be as little doubt that it was a warlike armament of considerable force. Ill success may have involved the achievement in a myth.

180. The golden fleece has been not improbably considered emblematic of the silk trade, and the importation of the fleece-like sheaves of raw silk into Colchis from the East. We have no information of the introduction into Europe of this appreciated article for many centuries afterwards; but as the Argonauts plundered Æa, they perhaps destroyed the goose which laid the golden eggs.

181. TROY (B.C. 1183).—We mention Troy, not as connected with commerce and voyaging, further than it was the second and greatest expedition of all the Greeks, and as affording a guiding date so far as it may be approximately placed at 1183 years before Christ, and as affording a notion of the dimensions and character of their ships.

182. We refer to it also as a point of time at which we find a navy list of those ships and the numbers of their crews. The list from the second book of the Iliad affords some idea of the comparative power of the confederate states, although the numbers of war-ships are no criterion of the extent of their commerce or their merchant fleet. We also present it, in the curious contrast which it affords to the English navy list in the reign of Edward III., anno 1347, when England pretended to the sovereignty of the western seas. His fleet is described as the huge fleet before Calais.



## GREECE, B.C. 1183.

	Ships.	Men in each.		Ships.	Men in each.
Mycene, Corinth, Si- cyon, etc. . . . .	100		Argissa, Gyrtone, Or- the, etc. . . . .	40	
Pylos, etc. . . . .	90		Magnetes . . . . .	40	
Crete . . . . .	80		Aspledon and Minyan Orchomenos . . . . .	30	
Argos, Epidaurus, Ægi- na, etc. . . . .	80		Nisyros, Cos, and Ca- lydnæ isles . . . . .	30	
Arcadians (lent by Aga- memnon) . . . . .	60		Tricca, Ithome, Cecha- lia . . . . .	30	
Lacedæmon, etc. . . . .	60		Cyphus, the Enienes, etc. . . . .	22	
Bœotians (dark ships). . . . .	50	120	Salamis . . . . .	12	
Athens . . . . .	50		Cephalonia and Ithaca (red ships) . . . . .	12	
Pelasgian Argos, etc. (Myrmidons) . . . . .	50		Phere, Bœbe, Glaphy- ræ, and others . . . . .	11	
Phocæans . . . . .	40		Rhodians . . . . .	9	
Locrians . . . . .	40		Methone, Thaumacia, etc. . . . .	7	50
Eubœa, Eretria, etc. . . . .	40		Syme . . . . .	3	
Buprasium, Elis, etc. . . . .	40				
Dulichium and the Echinades . . . . .	40		Total, ships	1186	
Ætolians . . . . .	40				
Phylace, Pyrrhasus, etc. . . . .	40				
Ormenium, Asterium, etc. . . . .	40				

## ENGLAND, A.D. 1347.

	Ships.	Men.		Ships.	Men.
Fowey . . . . .	47	770	Hull . . . . .	16	466
Yarmouth . . . . .	43	1075	Lynn . . . . .	16	382
Dartmouth . . . . .	31	757	Margate . . . . .	15	160
Plymouth . . . . .	26	603	Weymouth . . . . .	15	236
The King's ships . . . . .	25	419	Harwich . . . . .	14	283
London . . . . .	25	662	Wight . . . . .	13	220
Sandwich . . . . .	22	504	Goford . . . . .	13	303
Bristol . . . . .	22	608	Ipswich . . . . .	12	239
Winchelsea . . . . .	21	596	Grimsby . . . . .	11	171
Southampton . . . . .	21	576	Stoke . . . . .	11	208
Shoreham . . . . .	20	329	Exmouth . . . . .	10	193
Loo . . . . .	20	315	Rye and Lympington . . . . .	18	313
Newcastle . . . . .	17	314	Tynemouth and Ham- swelbroke . . . . .	14	237
Boston . . . . .	17	361			
Dover . . . . .	16	336			

ENGLAND, *continued.*

	Ships. Men.			Ships. Men.	
Hithe, and two other places . . . . .	18	303	Scarborough and 19 . . . . .	20	390
Portsmouth, Hastings, and seven others . . . . .	40	618		700	14,151
Lyne, Romney, and Poole . . . . .	12	221	STRANGERS.		
Sidmouth, and three other places . . . . .	12	213	Flanders . . . . .	14	133
Faversham, and fourteen other places . . . . .	30	515	Bayou . . . . .	15	439
			Spain . . . . .	7	184
			Guelderland . . . . .	1	24
			Ireland . . . . .	1	25
				38	805

As to the numbers of the crews, Homer informs us only that the Boeotian ships had 120 each, and those of Methone, Thaumacia, Melibœa and Obizon had each fifty warriors, without mentioning whether they had any other crew. A rough average would estimate the army at about 100,000 men, if we assume that the numbers mentioned comprise the sailors and fighting-men.

183. We prefer citing Macpherson to attempting our own view of the shipping of these heroic times. "The ship of Danaus," he says, "which was rowed by oars, was a Phœnician vessel; and there is reason to believe that the Argo, though built in Greece, was the work of Phœnician carpenters. She was a long, slender, open boat, which could carry fifty men, and could be occasionally carried by them."

"Of the vessels employed in carrying the Grecian army to Troy, the smallest bore fifty men, and the largest 120. They were very slightly built, and were hauled on shore after finishing a voyage. Thucydides says they were only large open boats; whereas Homer describes Ulysses as covering his ship with long planks (but *quære* whether those long planks formed the deck or the bottom of the vessel.) It is probable that some of the larger ones had at least half decks, to furnish some kind of lodging for the people, and that the space occupied by the rowers was open, the sides being connected by slender beams or planks, on which the

rowers sat, with their feet set against the bottom timbers, or transverse pieces of wood near the bottom. They had but little depth, and seem to have been very flat in the bottom, and consequently drew very little water; which is further probable from the lead-line being never mentioned by Homer, whence we may presume that the oars were found sufficient to sound the depth of the water. They appear to have had only one mast, which was struck when they finished the voyage, and one sailyard; though Homer mentions sails in the plural, which is perhaps a poetical licence, as it is not probable that they understood the management of what is now called fore-and-aft sails. But their main dependence was upon their oars, and their only dependence for their course was the knowledge which some of the crew had previously acquired of the appearance of the shore. When that failed them, they must have landed to obtain information."

184. We have described the Chinese and South Sea vessels sufficiently to exhibit them in certainly not a disadvantageous competition with the navies of the Phœnicians and the Greeks.

185. It appears that the English fleet up to and in the reign of Edward III. was constituted of vessels far inferior in capacity, and far less efficiently manned, than the galleys engaged in the expedition to Troy. Of their character we shall have something more to say in another page.

186. About eighty years afterwards the Dorians, led by the Heracleidæ, pressed from the north, and distressing Attica in their way, penetrated into and subdued the Æolian and most other states of the Peloponnese. They overthrew the ancient dynasties, and expelled many of the occupiers of the land.

187. The Ionians, chiefly from Attica, settled on the opposite Asiatic shore, and soon afterwards founded or increased Miletus, Ephesus, and Smyrna, and other towns on the mainland and in the neighbouring isles.

188. The exiled Æolians settled north of the Ionian district, and established themselves in, founded or increased Cyme (B.C. 1033) and other cities, as well on the coasts as in the adjacent isles.

189. Phocæa is of more doubtful origin, perhaps partly from one of those sources, partly from the other. Indeed many, perhaps all those settlements on the Asian coast, were accessions to pre-existing residents, Asiatic and European, gathered from the islands and the main. This may to some extent be inferred from the Homeric catalogue of ships.

190. Some of those cities had previously attained maritime power, and even established factories, or a connection with the coasts of the Pontic Sea. Miletus had visited Sinope, and perhaps begun her establishments there. She had sent her forces to aid the Dardans in the defence of Troy, —a rude population, but trained to the sea by settlers from Phœnicia or the isle of Crete. "Nastes commanded the barbarous-voiced Carians, who possessed Miletus and the leafy mountains of Pethiri, the lofty hills of Mycale, and the streams of Mæander." The Ionian invasion was perhaps the impulse which sent the ancient inhabitants in search of foreign homes, and to increase the settlements which had been previously begun on the coasts of the Euxine and other seas.

191. Smyrna has continued to this day one of the greatest emporia of Eastern trade.

192. They are all distinguished by more or less commercial enterprise, and more or less vigour in their quarrels with the Lydian and the Persian kings. But several are more illustrious in their progeny than in themselves. Miletus founded Naucratis in Egypt, and most of the Greek settlements, among them Sinope, in the Euxine Sea. Phocæa, like the phœnix from her own ashes, founded the Gallic emporium Massilia, the modern Marseilles.

193. SINOPE.—When the Ionians and Æolians took possession of the Asiatic coasts, the mixed population of Miletus,

Carians and Cretans and Phœnicians, had to seek a new home. They found one at Sinope, advantageously situated for commerce on a promontory jutting out about midway on the southern shore of the Euxine Sea. There was room for Sinope and Colchis, and for minor settlements along the margin of those waters. Sinope flourished and maintained a connection with her parent state.

194. The Cimmerians invaded Asia Minor from the north, and the settlement of Sinope was almost destroyed. The Cimmerians were driven back, and Sinope was repeopled from Miletus, and flourished again. About 780 B.C. a second irruption of the Cimmerians desolated Sinope a second time; but she rose brighter from her ashes, and with the help of her Milesian compatriots distributed settlements in every direction along the Pontic shores. About B.C. 756 she established Trapezus, where Trebizond now stands in the East, and began to encroach on the Colchian realm.

195. About the middle of the seventh century other inundations broke in from the north. First the Cimmerians came upon the regions of Lydia, whose capital, Sardis, they took (B.C. 635). Next poured the Scythians, in the following year, over all Northern Asia, and Mesopotamia and Palestine, rolling back the hosts of Cyaxares, and desolating the land. "A day of darkness and of gloominess, a day of clouds and of thick thickness, as the morning spread upon the mountains: a great people and a strong; there hath not been ever the like, neither shall be any more after it, to the years of many generations. A fire devoureth before them; and behind them a flame burneth: the land as the garden of Eden before them, and behind them a desolate wilderness; yea, and nothing shall escape. The appearance of them as the appearance of horses; and as horsemen shall they run." Such was the description of the Hebrew bard (Joel) who witnessed this invasion.

196. The discipline of the Median armies at length prevailed, and after a conflict of eight-and-twenty years drove

the ravaging hordes back over their mountains. Victory had previously crowned the Lydian arms. Before the Cimmerians were finally expelled, such is the elasticity of commerce, Sinope was re peopled (B.C. 629), and began to flourish again. Within twenty years it had founded Apollonia, and within forty Odessus.

She rapidly spread her commercial empire round the Euxine, planted the Tauric Chersonese, where grew up (B.C. 480) the kingdom of Bosphorus, which maintained its prosperity and independence 360 years ; and although (B.C. 183) she was captured by the king of Pontus, it was to become still more sumptuous and prosperous as the capital of the conquering state.

197. For nearly 800 years the descendants of Miletus ruled the Euxine Sea, not by arms, but by commerce, planted, enriched, and civilized the people around its coasts, from the Golden Horn to the Tauric Chersonese. Shipping swarmed in the magnificent harbours of Sinope and the ports of Olbin, on the mouth of the Borysthenes, Panticapæum in the Tauric peninsula, Phanagoria and Tanais at the extremity of the Sea of Azof, Dioscurias, near where *Æa* stood, Trapezus, Heraclea, Amisus, and other towns on the northern shores of Asia Minor.

198. Nor had the inland commerce which came to Colchis ceased ; nor was that the only route of traders from the East. The merchandise arrived there from Mongolia, northward round the Caspian Sea, the Ural mountains and the Tanais (Don), through nations, to Europe even now almost unknown, but by unalterable routes, which the people of these districts still pursue.

199. By the Romans this civilization and commerce was interrupted, and for awhile almost destroyed. It after several centuries revived in the Tartar cities of Caffa and Crim.

200. SOVEREIGNTY OF THE SEA.—While the western Mediterranean and the External Sea were exclusively en-

joyed by the Phœnicians, and more especially by their Carthaginian and Spanish colonies, and the Tyrrhene by the Etruscan state; and while, in the pursuits of commerce, Tyrian and Sidonian shipping still covered the eastern waters, and probably prescribed the law for their peaceful use, the so-called sovereignty of these waters was held, or pretended to be held, successively by the Cretans, the Lydians, the Pelasgi, the Thracians (to B.C. 914), the Rhodians (to B.C. 891), the Phrygians (to B.C. 866), the Cyprians (to B.C. 833), and the Phœnicians (to B.C. 786). For a short time the Egyptians, probably with Phœnician and Greek ships, and sailors, acquired the dominion (to B.C. 751). They were succeeded in order by the Milesians (to B.C. 733), the Carians (to B.C. 672), the Lesbians (to B.C. 603), the Corinthians (to B.C. 576), the Phocæans (to B.C. 532), the Samians, the Naxians, the Eretrians; and afterwards the inhabitants of the little isle of Ægina became supreme, and retained its maritime dominion from B.C. 485–477, when the Athenian power arose.

201. As to what was the nature of this sovereignty, we are scantily informed. It seems to have consisted in the greater immediate naval power of doing harm, derived from a victory or two at sea, and illustrated by a ravage or two on the coasts of the preceding tyrant; when commercial states, such as Crete, Rhodes, or Phœnicia, obtained the ascendancy, in the partial repression of piracy; and, when the military states prevailed, in its practice on an extended scale.

202. The exercise of sovereignty in the ordination of laws was perhaps never affected, except when the transient sceptre was in the hands of Phœnicia or Rhodes.

203. MAGNA GRÆCIA AND SICILY.—Before and at the time when we perceive the first indication of settlements in that part of Italy afterwards called Magna Græcia, from the regions of Sicily and the adjacent coasts,—settlements which we have already mentioned as afterwards abandoned,—that part of Italy appears to have been occupied by a similar

race or races, by some described as Pelasgians, by others as aborigines, engaged in contests with the Siculi or Sicels, whom they drove into or restricted to the island on which the name of Sicily was conferred.

204. The Phœnicians, spreading colonies in their progress towards the shores of Africa and Spain, appear to have occupied with their factories every desirable position on that island, and to have brought it almost entirely under their peaceful rule.

205. The Pelasgians appear also to have been pressing northward upon the Etruscan territories, and encroaching upon that ancient realm.

206. It is not improbable that when the Dorians, about eighty years after the Trojan war, dispossessed the former inhabitants of Sicynia and the northern coasts of the Peloponnese, swarms of these people, to whom the opposite shores of Italy were well known, sought again to establish themselves there.

207. But of this we have no record, though inferences may be drawn from the rapid progress and extension of the Grecian colonies which afterwards arrived.

208. CUMÆ.—Among the earliest, if not the earliest, of the Grecian settlements in Italy was Cumæ, in the north-western corner of her beautiful bay. If tradition is to be credited (B.C. 1050), Chalcidians from Eubœa, and Cymæans from Æolis, and perhaps Eretrians, possessed themselves of Misenum and the Dicæarchian port. Industry and commerce extended her sway, towns and villages, among them Parthenope (Naples), emanated from her. The Campania became her realm; for 200 years at least (700 to 500 B.C.) she flourished, although in conflict with the Etrurian power. But the rude Samnite crushed her (B.C. 420), and the Roman planted on her and all her progeny his tyrannic rule.

209. SICILY.—In the middle of the eighth century before Christ, at the time of the foundation of Rome, Sicily was occupied by Phœnician colonists, in factories and towns trad-



ing with, but independent of, their native state ; independent also of, although naturally on most friendly relations with, their more powerful brethren, who occupied Carthage on the neighbouring coasts. The native Sicilians were pacified or subdued.

210. But in B.C. 735 and the seven following years, an immense outpouring from Corinth and other parts of Greece flowed in upon and drove the Phœnicians from the entire eastern coast.

211. The migration first lit upon Naxos, it then settled in the delectable Syracuse, and soon occupied Leontium, Catana and Megara Hyblæa in the intermediate space. In B.C. 716 Mylæ was founded, and in B.C. 690 the Rhodians and Cretans took possession of Gela in a bay upon the southern coast.

212. The eastern and the south-eastern regions were soon occupied by the swarming people and growing power of the Greeks. The Phœnicians had been pressed back westward before them. Carthage perhaps was not yet strong enough, or sufficiently warlike, to interfere ; but upwards of a century elapsed before any further advance westward was made, and in B.C. 582, Agrigentum, the sumptuous, was built.

213. Here for awhile the inundation of Greek colonization was stayed ; a tiny river divided the Hellenic and the Punic race.

214. Up to about B.C. 500 there had been abundant quarrels and skirmishes in Sicily, but no memorable war. Every colony had cultivated commerce, become prosperous and great. Syracuse had grown into a state of magnificence. The avarice and ambition of the tyrant of Gela were excited ; he aimed at the conquest of Syracuse and the dominion of the entire isle.

215. The Phœnician colonists called on the Carthaginians for aid, but they came too late. In the year (B.C. 490) when Miltiades routed the Persians at Marathou, Gelon conquered and captured Syracuse ; and (B.C. 480) when Themistocles destroyed the fleets of Xerxes at Salamis,

Gelon defeated the Carthaginians in Sicily with a terrible rout, and compelled them to accede to an ignominious peace. Six years afterwards, (B.C. 474) the Syracusans achieved a naval victory over the Etruscans, which grievously and permanently affected that power.

216. In B.C. 410 the Carthaginians renewed the war, and in the following year took Agrigentum. A bloody and indecisive struggle was continued between Carthage and Syracuse till B.C. 368, followed by a truce rather than a peace. In B.C. 345 the war was renewed, and continued for five years; neither party had to boast of success.

217. Until sixty years after this the Sicilians had hardly heard of Rome.

218. When the phalanx of Pyrrhus invaded Italy, the Latians had to encounter a terrible foe; they looked abroad no more for conquest, but for alliance and the means of defence. Rome and Carthage were combined, and Italy and Sicily beheld with apprehension the encounter of the common enemy. Rome, ever victorious, triumphed over the elephants, and was inspired with the ambition of triumphing over the Carthaginian ships. How they collected their fleet is doubtful; but they fought one naval battle (B.C. 280), and won.

219. The rest of the tale of Sicilian conflicts belongs to the story of Carthage, for the Roman has (B.C. 260) entered the field.

220. *MAGNA GRÆCIA*.—About two years before Samaria was taken by the Assyrians, in the twenty-fourth year of the era of Nabounassar, and thirty years after the foundation of Rome (B.C. 723), on the close of the war in which the Lacedæmonians had desolated their country, a band of Messenians emigrated to the opposite shores and founded Rhegium, almost at the southern extremity of Italy, opposite Messina, which now stands on the Sicilian coast.

221. Within two years afterwards the Achæians sent forth a colony to Sybaris, and twelve years afterwards (B.C. 710) another to Crotona, in the Tarentine Gulf.

222. Two years after this a body of Parthenians from Sparta founded Tarento, at the head of the same gulf.

223. Within thirty years Locri was founded, between Crotona and Rhegium.

224. By this time Grecian cities had taken possession of the entire south-east regions of Magna Græcia, and fought and traded with each other, and traded largely, and pirated not a little on the sea. Wealth, luxury, and magnificence adorned their cities, and dissipated their native strength. Sybaris (B.C. 510) was swallowed up by Crotona, and Crotona became unable to defend herself. Tarentum and its confederates, trembling at the advance of Rome, sued for the Grecian phalanx. The phalanx and the elephants came, and Magna Græcia was trampled and trodden down by the phalanx and the elephants, and obliterated (B.C. 272) by triumphant Rome.

225. CARTEIA (Heraclea).—This most ancient settlement of the Phœnicians, on the Bætic shore in the narrowest part of the strait, seems to have grown into great power and prosperity some ages before Utica is said to have been founded, or Carthage to have been built. A Phœnician colony was there established, and afterwards augmented by the settlement at Gadir or Gades, still further to the west, where Cadiz now stands. In Carteia was erected a temple to Melkarth, where, down to Grecian times, his worship with Phœnician rites prevailed.

226. Carteia and Gadir civilized the surrounding lands. The Semitic became blended with the Iberian race. Tyre claimed no sovereignty over her emancipated child. A friendly and profitable intercourse prevailed. Tartessus collected into its emporia the gold, the silver, and other mineral and industrial products of Spain, and bartered them for the manufactures of Sidon, and the exports of the furthest east. Tartessus collected not only the merchandise of Spain; Carteia and Gadir were to the Cassiterides and to the north-west what Phœnicia had been to them.

Without doubt factories, if not settlements, were founded from thence on the Cornish and other parts of the English coasts, and towards, if not within, the Baltic Sea, for, among others, the much esteemed exports of pearls and amber and tin.

227. This was the poetic region of the bards of Greece, the land of gold and of silver, of fruits and of flowers, of healthful breezes and of sparkling streams, the luxurious Andalusia, Homer's Elysian fields.

228. Here were the wandering ships of the Phocæans, in search of another home (about B.C. 540), hospitably and magnificently received among the civilized people of a powerful state.

229. CARTHAGE.—Of all the daughters of Tyre, the fairest and the most mighty and proud was Carthage, the rival of all-subduing Rome.

230. Had the army of Hannibal levelled the Capitol, and the legions of Scipio encountered defeat, how differently would have been written the history of the world! Phœnicia was not only the mother of commerce, she added letters even to the language of Greece. What earlier histories than those of Sanchoniatho and Berosus may have existed, and how many of them might have been preserved! Her language, like the Etruscan, is extinct; we know it only by affinity to kindred tongues; her history is in echoes from calumniating Italy, and admiring, but ill-informed, Greece.

231. Phœnicia, wherever she went, spread peace and prosperity, protected the waters, and sowed the land. Rome spread war and desolation, and reaped the land with a ruthless sickle, but sowed it not again. She did confer blessings, which not all conquerors bestow,—systematic institutions and law, under which those who chose might sow. But she little encouraged the sower; she gathered the bulk of the harvest into her own garner, and left the labourer small recompense for his toil.

232. The Carthaginians also cultivated the arts of peace :

merchants are naturally opposed to war. They were compelled to arm in self-defence. They occasionally conquered. Victory, even warfare, generates ambition among the chieftains and the rulers. The calculations of commerce are sacrificed to the lust for conquest and the speculations of power.

233. Such was the history of Carthage. The largest migration which had moved from the Syrian coasts, about fifty years before the Trojan war (B.C. 1230), clustered about a small peninsula, projecting into a bay and forming two natural harbours, nearly equidistant from the Pillars of Hercules and their native land, just where the African coast stretches forth towards Sicily, Italy, and Greece, almost in the centre of the western world. Behind lay an immense fertile continent, replete with the necessities of life, and producing many commodities for exportation, either in a raw or cultivated state. Beyond she was girt by a desert, which barred the approach of any powerful foe.

234. Her harbours with wet docks, and all her vast accommodations for merchandise and shipping, her splendid edifices, her then unparalleled wealth, her great extent, and the hundreds of flourishing towns throughout her wide domain, attested the prosperity which had sprung from peace.

235. All the south-west coast of Spain was studded with Phœnician colonies, and they were yearly springing up from thence to the confines of Gaul. The Sardinian ports were occupied by Tyrian mariners and Sidonian artisans. All the Sicilian harbours were peopled by children or grandchildren from the Syrian coasts. Malta, and Majorca, and Minorca, and every little isle was Phœnician in people or in heart. Corsica was held by the Etrurian, but Etruria was a commercial state. Peace had reigned over the western Mediterranean, and happiness and unwarlike habits had prevailed. Rome was a den of robbers, hardly conscious of the neighbouring sea, when the Corinthians came to the eastern

and southern coasts of Sicily, and began to disturb the peace. From time to time they pressed forward, and others came from Rhodes and Crete.

236. Until called upon for aid, the Carthaginians did not interfere. The colonies of her race were scattered through the west. Carthage was the most influential, but affected no sovereignty, nor was any allegiance owed.

237. Carthage had not the proper sentiment of war; she had not the prudence or the martial spirit which arms itself to the battle. She fought with mercenaries and with hirelings, and encountered frequent defeat. Her first reverses were in Sicily, of which we have mentioned the uncertain war.

238. CYRENE (Cyrenaica).—Agesilaus, who assumed the name or title of Battus, a Lacedæmonian, led the Greeks to this beautiful region of Libya (B.C. 631), and in defiance of the haughty notion of the Spartan, commingled with the native race. In that healthful seat commerce took its station, and after accessions from Ionia, and every other district of Greece, prosperity and affluence, and science and taste, as well as arts, adorned Apollonia and the other cities of Pentapolis, of which splendid ruins are still found. For 500 years, between Carthage and Egypt, notwithstanding intestine wars and foreign treasons, and massacres and direful revenge, such was the energy of commerce, that foreign invaders were repelled, and Apollonia flourished the centre of merchandise for a widely-extended realm. But Cyrene and Apollonia dwindled under the fostering care of Rome.

239. CIRCUMNAVIGATION OF AFRICA, which occurred in this interval, belongs to the history of Phœnicia; for although the expedition went forth under the auspices of the Pharaoh of Egypt (Necho, B.C. 606), it was performed by Phœnician mariners in Phœnician ships.

240. Internal evidence carries conviction of the truth of the story to every unprejudiced mind. It is more definite,

and not less attended with romance, than their indubitable voyages in the reign of the Jewish Satrap for the products of Monomotapa and Ind. Like other information of Herodotus, discredited by ignorance and bigoted priests, it has found confirmation or explanation in the experience of modern times. The sun was seen to the north, and the ships which sailed from Suez returned by the Mediterranean Straits.

241. Nor was it regarded as romance in the days in which it was accomplished. It became impossible to commerce to frequent the voyage, as all things are deemed impossible to the merchant which do not promise a commercial reward.

242. The length, and danger, and unproductiveness of the voyage proscribed its repetition in the pursuit of gain ; but that it was not deemed impracticable is made manifest by the commutation by Xerxes of the sentence of death passed on his nephew, to the performance of an expedition in the reverse direction, in which he failed, but Gama succeeded. In the narration of his voyage, the Persian described the pigmy bushmen dwellers of the regions of the Cape.

243. TYRE.—Unfold the map again (B.C. 587). 2200 years before this was seen the temple of Melkarth in the midst of the daughters of Zidon.

244. Samaria has wept in her ashes during 150 years. The Assyrian smote her, and carried her emirs into captivity. Jerusalem exulted over the destruction of the rebellious fane.

245. Thou, too, art smitten, insulting Salem (B.C. 587) ; thy children weep beside the waters of Babylon ; the flames have devoured thy shrine.

246. Assyria, the destroyer, Assyria, empress of empires, the mighty Nineveh, the confluence of nations, has fallen (B.C. 606) before the insurgent Mede.

247. The dynasties of Damascus have passed away. Syria, and Canaan, and Palestine, from the desert to the margin of the sea, have been swept by the Assyrian, the

Scythian (B.C. 634–607), and the Babylonian desolations; the temples of Melkarth and Astarte alone survive.

248. The armies of the Chaldean are marshalled around the merchant city. The prophets of Salem pour forth their denunciations against thee, and the vials of their wrath on the regions of the Nile. For thirteen years thy palaces have resounded with the clangour of arms; but thy navies guard thy island, and ride triumphant on the sea. The Lydian, and the Lycian, and the Persian hang their shields on thy bastions, and array their thousands on thy walls; the squadrons of Togarmath are mounted in thy streets, and the Egyptian hosts are advancing.

249. Vain are the denunciations of the prophet; the fury of his hatred is vain. The armies of Babylon are retreating; the siege of the merchant city has failed.

250. MARSEILLES (Massilia).—About 600 years before the Christian era, the Phocæans, who were then rising into maritime power, and to whom, from 576 to 532, is ascribed the sovereignty of the sea, under Euxenus, who had already contracted a friendship with the ruler of the place, settled on the southern coasts of Gaul, not far from the mouth of the Rhone, and there founded Massilia, now represented by the flourishing town of Marseilles.

251. It is obvious, from the story of the settlement, that the Phocæans had previously visited these parts. Probably they had established such commercial relations as rendered them welcome guests.

252. There they formed an emporium, which, next to Carthage and Carteia, became the most important seat of commerce, and the most prolific centre of colonization for the West.

253. Domestic troubles, and the invasion of Cyrus, compelled the Phocæans, about sixty-six years afterwards, to quit their native seats; they planted, or endeavoured to plant, a settlement at Alalia, in Corsica, and successfully encountered the combined Carthaginian and Etruscan fleets. But the



vicinity of these formidable nations compelled them to abandon the enterprise, and to add their numbers to the settlement of their brethren in Marseilles.

254. From this time Massilia flourished. We hear nothing of her wars; but her minor towns, scattered from Liguria to Spain, excluded the Punic merchants from the whole south coast of Gaul.

255. She spread her civilizing and enriching influence to the very north of the mainland, and established colonies or factories opposite the British shore, from which she carried on a lucrative commerce with the southern coast of England, and derived from Cornwall in that direction the much-coveted tin. Nor was that the only product. We hear of the import of lead; and the vicinity of her merchants, residing among the Veneti (in Brittany), not very far from the outlet of the Baltic, afforded the opportunity of purchasing amber, still more coveted than tin.

256. While the vessels from Carthage and Carteia reached the Cassiterides by sea, the British exports, brought across the Channel, were conveyed in about thirty days from the north to the southern ports of France, and thence distributed to the east by the ships and customers of Marseilles.

257. She, 150 years before the Christian era, was pressed by the transalpine Ligurians, and called for the aid, and, as a consequence, submitted to the sovereignty, of Rome. Her devotion to commerce, her convenient situation, and her pre-established connection with the coasts opposite to Albion, preserved to her the commerce which the defeated Carthaginians lost.

258. NAUCRATIS.—The Greek pirates infested Rhacotis, and, according to their habit, combined pillage and commerce along the Egyptian coasts. The Pharaohs strove to exclude them from their shores; but (B.C. 550) Amasis, to suppress piracy and encourage traffic, permitted Milesians to found a city in the Saitic nome on the eastern bank of

the Canopic branch of the Nile,—a city which stood, when Alexandria was founded, perhaps by reason of the extension of the alluvial land, full thirty miles from the sea. Like the Hanse Towns and other great cities of Europe, it enjoyed, by grant from the Pharaohs, the rights of self-government in the midst of a sovereign state. Though founded by Milesians, its population and prosperity were advanced by immigration from all parts of Greece. Its manufactures were porcelain and peculiar wreaths of flowers. Its prosperity knew no check till imperial Alexandria arose.

259. **ATHENS**, daughter of Cecropia (B.C. 1586), hybrid of Hellenic and Phœnician descent, birthplace of æsthetic beauty, school of wisdom and the elegant arts; for a thousand years thou hadst quietly and silently prospered, and weathered the storms which threatened, or broke upon thine or thy adjacent lands. The days of thy triumph, the days of Marathon (B.C. 490) and Salamis (B.C. 480), the morning of thy pride and ambition was the prelude of thy glory, and of thy speedy fall. Thy ships of commerce are converted into ships of war, and assert a piratical sovereignty on the sea (B.C. 477–413). Thy long walls are prepared (B.C. 456) for the defence which had been better maintained by thy forces engaged in invasion and foreign exploits. In thy pride and in thy glory, while everything is beautiful within thee, while Pericles rules, and the defamed Aspasia surrounds thee with a halo, thou art rushing upon ruin, and verging upon thy fall.—For sixty-four years only endured her splendid dominion, among the shortest and brightest eras of empire. The relics of the disordered army and baffled vessels which fled from Syracuse (B.C. 413–412) could no longer support her usurpations, or maintain dominion on the sea. Her power had departed before Lysander at Ægos Potamos took her navy while its sailors were taking their lunch.

260. **CARTHAGE**.—During the early period of her contests in aid of her Sicilian allies, Carthage expanded her naviga-

tion and colonies with a boldness standing in strong contrast with her want of energy in war.

261. She (B.C. 450) dispatched Hanno, not to discover, for she must, since the voyage of her forefathers in the time of Necho, have known, but to colonize, the African coast beyond the Pillars of Hercules, with sixty ships, bearing 3000 persons, including women and children, on board. The numbers indicate emigration to known places of settlement rather than in search of a home. These were settled, in various positions, from Abyla to Cerne, that is, from Ceuta to somewhere about the mouth of Senegal.

262. About the same time, Hamilco was dispatched, but, probably, rather for discovery and commerce than for colonization, with a considerable squadron along the north-western coast of Europe, and obtained considerable information of this region: indeed, it must have been to a considerable extent well known to their compatriots of Gades, and the other settlements in Spain.

263. ROME began her career with the destruction of commerce, in the subversion, or on the wrecks, of a magnificent city, which may be called primæval Rome,—a city which had constructed for her relief, in an unhealthy, and often inundated situation, with an enormous population, sewers adequate to the exigencies of Babylon, or the metropolis of the British realm,—sewers such as London is now first about to form,—sewers for which the tents of Romulus and the shanties of the Palatine, and even the cottages of the patrician owners of five- or six-acre farms, during the caziquedom of Servius Tullius and Tarquin, had no more occasion than the inhabitants of a country town; works of which it is obvious that the Romans were ignorant, when, after the conquest of Brennus, they built their streets crosswise above them. The whole Roman territory, at the time to which these stupendous works are usually ascribed, was less than those of some modern landed proprietors. The fee-simple of her possessions, from 60,000 to 100,000 acres of by no

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means good land, would not have paid the wages of the workmen who constructed these works, even if they had workmen of adequate skill.

264. The port of Ostia, dependent on its vast artificial accommodation, was adapted to a great merchant city, not to the martial clowns of regal Rome. They had neither the wealth, nor the labour, nor the talent, nor the need, nor the thought, which could devise, perfect, require, or desire such a port for such a town.

265. The Romans were never a commercial people; they had no genius for traffic; they sought not to earn by industry what they might obtain by force.

266. TYRE.—Once more must we turn our eyes upon Tyre. The mother of nations sits desolate; the merchant city is once more besieged. Another monster, more fierce and more successful than the Babylonian, has set forth on his career of conquest, by murder, rapine, and desolation to acquire the name of Hero and the appellation of Great.

267. The Macedonian phalanx has occupied the shores, and a huge mole of rock and rubbish is creeping irresistibly forward to the island gates. A ruthless and passionate boy has doomed the city, deemed eternal. After 2500 years of wealth and power (B.C. 332), her race of glory is run. Her supremacy is transplanted. Alexandria shall enjoy her commerce, and immortalize the destroyer's name.

268. ALEXANDRIA.—Was it that mad boy's wisdom, or was he taught it by a prophetic seer? The desolator of nations, the destroyer of Tyre, the conqueror of Naucratis, from which perhaps the shore had too far retired, saw that nature had created the beach between the ocean and Lake Mereotis for the emporium of merchandise between India and the West. The refuge of the rover was destined to be the imperial city. Its founder passed away, his undigested empire dissolved; but Alexandria became a royal city, spacious and noble, and rich and proud. She became, and remained during the whole reign of the Ptolemies, empress of the Mediterranean trade; and during the reign of Rome she

must be so, for Rome must frequent her harbours or starve. But the Athanasian and the Arian are deluging her streets with blood, and gorging them with slaughter, in their ruthless strife. Her ports are empty, her streets are desolate, her libraries and palaces are in decay. Amrou, with his hosts from the desert, has seized the depopulated town. For awhile she mourns in desolation, her prosperity for awhile has passed away, the Arab and the Abyssinian supplanted her, until the Caliph restored her ports, and invited the Christian and the Moslem, with equal privileges, with equal benefits, with equal hospitality, to the harbour of the reviving town. Alexandria breathes again ; and although the bold mariners of the West have found a wider passage, Alexandria has been, and must be, a thriving town.

269. CARTHAGE AND ROME.—Almost the first communication which Carthage received from Rome as a considerable power, was the solicitation of her alliance against the king of Epirus, who threatened to trample down Italy with the Grecian phalanx and the Oriental machinery of war.

270. In the year B.C. 509, and again in B.C. 348, Carthage had entered into treaties with Rome ; but inasmuch as they referred chiefly to the rights of navigation, to the mutual exclusion of the shipping of the two nations from certain districts of the coasts of each other and their respective allies, and as Rome had scarcely a harbour or a ship, it is just to infer that they were among the common form conventions between Carthage and the Etruscan States.

271. But the advance of the descendant of Achilles in support of the Sicilian and Tarentine descendants of Greece, united Carthage and Rome in a common cause. The western empires, as they may be deemed, entered into a defensive and offensive treaty. Carthage was to furnish the vessels of war, for the Romans had none to supply.

272. Punic faith observed the treaty, the vessels of Carthage defeated the Epirote's fleet ; but Pyrrhus landed again in Italy. Rome repelled the elephants of India, the legions routed the phalanx (B.C. 274). Rome extended her empire,

the dynasties of Magna Græcia went down before her. She swelled with pride and ambition. Her first war with Carthage (B.C. 264) followed. She armed herself for the sea; she was at first victorious, from time to time baffled and defeated; but it was impossible that merchants with their mercenaries should vanquish the children of Mars. In 241 B.C. ended, in the discomfiture of Carthage, the first Punic war.

273. Sicily and the sea were the battle-fields. Rome aided Syracuse to enthral, and at length to enslave her.

274. The war with Carthage was terminated by treaty, which was violated by Rome. Sardinia (B.C. 237) rebelled against Carthage; Rome broke her contract and seized upon the coveted isle, and upon Corsica, which Etruria had ceded to Carthage; thus demonstrating the distinction between Roman and Punic faith.

275. Battles had bred warriors, and the princes of Carthage were inflamed with ambition and revenge. The loss of her sister-colonies excited the merchants. Sicily was almost ravished from her, Sardinia and Corsica were irretrievably gone. She associated or compelled her kindred colonies of Spain into schemes of ambition and conquest. Her aggrandizement there, and her confederations with other enemies of Italy, brought on (B.C. 218) the second Punic war. The Africans, the Spaniards, and the Gauls scattered the legions at Cannæ; the battalions of Hannibal threatened the imperial city, and Italy lay prostrate at his feet; but the genius of Rome prevailed. Carthage was vanquished (B.C. 201), surrendered her foreign possessions and her navy, and ransomed herself at an enormous price. Commerce redeemed the ransom; but Rome had elevated a ruthless and unscrupulous neighbour, and made him her ally, and an engine of disturbance and oppression to the devoted town.

276. The encroachments of Massinissa, and the perfidious plotting of Rome, involved Carthage in an inevitable invasion, called the third Punic war.

277. Carthage must be destroyed; Cato and Rome have decreed it (B.C. 149). Carthage had flourished as a trading city, but was now despoiled by the Numidian of half her African domain; even Utica had revolted, to evade the terrible decree. Rome had become the mightiest of nations; in the fields of Gaul, of Greece, of Asia Minor, and Spain, her armies had acquired the perfection of discipline, and often victorious, became trained to carnage and rapine, and ruthlessly ready to execute any judgment which would bring them spoil. Carthage was rich, but powerless. Unable to compete with an African prince, she could no longer encounter the legions; she could only fight the battle of desperation, she could not avert her doom.

278. In 146 B.C. perished the daughter of Tyre and Sidon, the mother of colonies, illustrious for the diffusion of wealth and the blessings of commerce, as Rome was famous for devastation and the glories of war. Forced at first by the Sicilian Greeks, and afterwards by Pyrrhus and Rome, to depart from her peaceful vocation, and to resort to the congress of arms, she proved unequal to the conflict, was humiliated in her first war with Sicily, vanquished in her first war with Rome, plundered in the second, and in the third perfidiously destroyed.

279. And when she fell, though her glory and her sovereignty had long before departed, and her commerce had greatly decayed, the circuit of her walls was twenty-three Roman miles; her inhabitants were seven hundred thousand, industrious and wealthy, not like the pauper-pensioned inhabitants of Rome. The magnificence of what they had ruined astonished the barbarians who despoiled her; but the description of her harbours, her docks, and her quays, the palaces of her merchants, and the habitations and manufactories of her citizens, must be sought elsewhere.

280. BRITAIN.—Before the voyage of Hamilco, perhaps before Carthage was built, from Carteia, or Gadir, the Phœnicians visited the English coasts. From that period the

Tyrian settlers in the west, and possibly ships from the parent state, obtained from the Cassiterides the much-appreciated tin. If these were the Scilly Isles, it is not credible that vessels which crossed the sea to visit them did not search for all the products obtainable along the adjacent coasts. The Phœnicians and their descendants did not for centuries confine their commerce to a single subject or a single point. We may feel assured that whatever could be procured in the southern regions of England, perhaps in its western, and on the opposite Irish lands, worthy of transport to Syria, to Africa, or Spain, found its value in eastern merchandise, and stowage in Phœnician ships.

281. For many centuries Tyre and her children kept the precious commodity to themselves.

282. About this time (B.C. 800) colonists or agents of the Massilians had established themselves on the Continent, in Brittany, opposite the English coasts. They purchased the tin from the far west, at an island called Mietis, perhaps St. Michael's Mount, conveyed it along the southern coasts, and, to avoid the Punic cruisers, overland to Marseilles, for distribution to Italy and the eastern world.

283. Before this (B.C. 314) Pytheas, a navigator from Marseilles, had coasted at least one side of Britain and its northern isles, and penetrated some distance up the Baltic, whence he carried back unquestionable evidences of his voyage.

284. As Carthage waned and fell, the British commerce passed to the merchants of Marseilles and their colonists and agents on the Gallic shore.

285. There is no history, in these ages, of the north of Gaul. From time to time we obtain a glimpse of the coast, and a vague notion as to what its inhabitants then were; but through what phases they had since the last inspection passed, will ever remain untold.

286. The Veneti (B.C. 100) were settled in the north-west coasts of Gaul (Brittany), and carried on the traffic with



the English, in Kent and at Mietis, in tin and lead, and the paltry pearls which tempted Cæsar, and corn, cattle, hides, and slaves, paying for them with implements for agriculture, trade, and war, and the luxuries and finery in which the half-reclaimed savage delights.

287. The Veneti were probably descendants from Massilians, blended with the people among whom they came, as the Massilians were the descendants of the intermixture of Gauls and Greeks. They were regarded by some as a Belgic, by others as a Batavian race. They had (B.C. 55) grown powerful on the sea, they had imposed a transit duty on foreign craft. Their ships were of oak, proof against the rostra of the Roman galleys; high fore and aft, their stems overlooked the castles on the Roman decks; their sails were of leather, and their cables were formed of iron.

288. ANCIENT SHIPS.—We have already given, from Macpherson, a description of an ancient Mediterranean ship of war. Naval architecture in this department had not greatly improved. As many experiments as in modern times, but not in such rapid succession, or on so large a scale, had been tried. The number of banks of oars had been from time to time increased; and again, from time to time the larger vessels had been razed and cut down; but in the latter part of the third century before the Christian era, they began to construct ships for transports, for palaces, and for trade, almost as unwieldy, and quite as uncouth, as any prodigies of modern times. Hiero, King of Syracuse, with the help of Archimedes, constructed a galley of twenty tiers of oars, carrying three masts, adorned and embellished as a palace, and surmounted with a castle and fortifications. Ptolemy built two rival monsters, one for the river, the other for the sea; the former 300 feet long and 45 broad, the latter 420 feet long and only 57 broad, each furnished with two heads and two sterns, like an edifice erected on two New Zealand war-canoes or river-scows. The latter carried 4000 oars, in 40 tiers, and affected to accommodate

4000 rowers, 2850 soldiers, and a swarm of scullions, hangers-on, and cooks. That the rowers rowed, or that the soldiers fought, we are uninformed; but we are told that for awhile the monument of pride and folly was immovable from the stocks, until a Phœnician engineer constructed a canal by which she was conducted towards the sea.

289. ADULE AND AXUM.—In the first century of the Christian era, towards the southern extremity of the Red Sea, on its western coast, while the oriental trade of Alexandria was depressed under the Roman sway, reappeared for awhile from the darkness in which it had been for eight centuries enshrouded, the ancient realm of Ethiopia, the land of Tirhaka, the conqueror of Thebes and of mighty Noph, the deliverer of Judæa, the angel that destroyed the Assyrian host. For five hundred years, as the power of Rome and the commerce of the Mediterranean with the East still further declined, Adule, the seaport of the magnificent Axum and Coloé, grew up and flourished, became the emporia of India and of Taprobane, and conferred on Abyssinia riches and commercial fame. Adule is now in decay, a pillar and a few sculptured stones of Axum remain, and Abyssinia is the battle-field of semi-barbarian tribes.

290. Unroll the map of the northern and the western nations, and of the external and the frozen seas. A thousand years before the reign of Romulus, beyond Calpe and Abyla, the Straits of Gibraltar, the Pillars of Hercules, stood his temple, the sanctuary of Melkarth, the Phœnician fane. Not far within these straits Carteia, not far beyond them Gades, Tartessus, the entrepôts of traffic in tin, imported to Tyre and to Sidon to harden Egyptian chisels, and to adorn the shield and the helmet, long before the era of the Dardan war.

291. There is a cloud upon the ocean, and a mist upon the shore. We see dimly and indistinctly, century after century coming into view, Phœnician and Punic colonies and

factories dotted along the western coasts of Africa to, and perhaps beyond, Cape Bojador. There are the Fortunate Islands, the Canaries, or Madeira the beautiful, distant in the sea; there, far beyond, is the vast Atalantis, vast because unexplored; there are the Elysian fields, the gushing fountains and pellucid rills; there are the Hesperian gardens, gorgeous with their golden fruit, a heaven for superstition, and for the philosopher a Utopian state.

292. Look along the coast of Portugal and the Cantabrian shores, and along the western side of Gaul, and the lands of the Belgæ and the Batavian fens. Have the Syrian ships been arrested in their ports? has Carthage sat still? have the Carteian and Gadesian merchants for a thousand years forgot their craft and loitered in their ports? There were cities and there was commerce, and there were silver and gold, and industry and prosperity, and wealth in Spain; Gades became of European cities second only to Rome. Were the other seaports uninhabited, and the other harbours silent, while the Phœnicians were in the land? From point to point, especially on the coast opposite Britain, factories and settlements of the Sidonian race were unquestionably planted; we see them not, but there they must have been, and near them are their rivals. The emigrants or agents from Massilia have built their warehouses on the north-western seacoast of Gaul, competing for the trade of Britain and the amber of the Sarmatian Sea. There are the Veneti, with their well-built ships.

293. There looms Scandia in the distance. The gulf and the North Sea and the Frozen Sea almost surround her, she may well be mistaken for an isle; and there are the scattered islands of the west, and there, among the Orkneys or the Shetlands, is remotest Thule. All these are as yet seen faintly, the people clambering their wild rocks, or in their small craft waiting for the deluded fish, or pursuing the seal,—avocations they are soon to relinquish for a fiercer sport.

294. There lie plainly before us the south-eastern parts of Hibernia, and, as clearly seen, the Cornish coasts; there is that islet at full tide, now St. Michael's Mount, where Gadesian and Massilian merchants are busy weighing tin, and bartering for it weapons and implements from their own forges, and spices and fine textures from Araby and Ind. The mingled progeny of Syria and Spain have commingled with the Celts of the Damnonian shore. The Roman historian recognized in the swarthy complexion and curled hair of the Silures the aspect of the Iberian race.

295. It is not improbable that there was some resemblance between the British, and a greater between the Hibernian and Etruscan tongues. It is not improbable, for they were all of Aryan descent, that the Irish and the Tuscan were borne into Europe by the same or a nearly contemporaneous wave, the former passing westward to Gaul and Britain, and the latter southward into the Italian lands; or perhaps the British were of a subsequent inundation, possibly that which impelled Brennus upon Etruria and Rome, and carried the Britons into England, and the Irish thence to their Emerald Isle. How far the one or the other of those languages may have been affected by mixture with that of the still earlier possessors of the lands, the Biscayans or the Fins, is rather for the philologist than for the history of the sea. It is probable that the Phœnician element impregnated both the Etruscan and the Irish dialects, and gave them the same means of exhibiting their language, and the same or similar additions to their speech, and that the Erse may assist to unfold the secrets of the Tuscan tongue.

296. The supposed island of Scandia, and the islets in the north-west, were the seats of the northern hives; not that they were prolific, as hath been assumed, but their pastures were barren, and their rocks were bare, and their forests were unsubdued. The progeny which clustered upon them could find scant sustenance either in the sea or on the shores. The greater swarms had proceeded from the mainland, but

even from the islands the starving population were compelled to issue in search of more fertile regions and better cultivated fields.

297. The mainland of Caledonia, the northern parts of Hibernia and of Britain, were occupied by equally needy, adventurous, but indolent tribes. Enterprising and intrepid in war and in plunder; active in sudden and spasmodic exertions, but intolerant of the labour which would by industry provide the ordinary comforts of life, or even cultivate the ground.

298. All these regions lay expanded before, though dimly seen by the Roman eye. Thule, says Pomponius Mela (lib. iii. c. 6), is opposite the shores of the Belcæ; it is celebrated in Greek and Roman verse, inasmuch as the sun comes forth to set but for a short period, for the nights pass quickly away, although as dark as elsewhere in winter, they are lucid in summer; since the sun, at that time raising itself, although unseen, illuminates the nearest regions with its neighbouring light. At the solstice indeed there is no night, for at that time becoming more manifest, the sun not only displays its radiance, but even a considerable part of its disk.

299. From the Euphrates to Thule, except the Scandinavians and their pirate boats, almost all was subject to Rome. From the Euphrates to Chryse, the still less determined eastern limit of the world, the Persians, and beyond them nations almost fabulous in place and power, sent by sea to Arabia, and to the Euxine and Mediterranean ports by caravans, commodities rare and costly, according to the distance from which they came, and the circuitous or feeble means by which they were conveyed.

300. But beyond Thule, the eye of a philosopher, guided by that speculation which realizes prophecies, discerned the distant wide-spread coasts which Columbus discovered, and to which another gave his name. Seneca, in the reign of Nero, prophesies through the lips of the Colchian Medea at the altar (Medea, l. 375):—

“Revolving years shall bring the day,  
When nature loosened by the sea,  
Th’ expansive earth shall spread abroad,  
And sailors o’er the watery road  
To trading nations spread the sail,  
Far, far beyond remotest Thule.”

But almost a thousand years of barbarism and night, with centuries of evening and morning twilight, were to intervene between the enunciation and fulfilment of this, one of the prophecies which has been most literally and accurately fulfilled.

301. We have described the ships of the Veneti, which occupied the north-west coast of Gallia when Cæsar crossed to the British isle. But not such were the ships with which the credulous Selden believed that Britannia then ruled sovereign of the sea. Her vessel was a thing of wicker and of canvas or hide, which would hardly bear the warrior, who could carry it more lightly than his shield. The type of this primeval British navy may be seen on the coasts of Wales or Ireland, when you are close enough to see it, audaciously encountering the sea—not surely degenerated, nor much improved. For combat—to it an African canoe is a sloop of war, a New Zealand periagua a line-of-battle ship.

302. Britain had no manufactures to export. Shipping will not thrive without an export trade. Her chariots were perhaps home-made; their adornments were imported by foreigners, and paid for in tin, lead, corn, and prisoners of war.

303. “After the Romans came to reside among them” (says Tacitus), “they began to cultivate the language of their conquerors and to emulate their dress, and gradually deviated into a taste for those luxuries which stimulate to vice—porticos and bagnios and the elegancies of the table; and this, from their inexperience, they termed politeness, whilst in reality it distinguished them as slaves.”

304. These censured luxuries must however have stimulated industry as well as vice, and have led to the creation, as well as to the display, of wealth. The more barbarous


tribes were for awhile pent up more and more closely in the North, and Britain lost perhaps less, and gained perhaps more, than any other country which fell under the dominion of Rome. The foreign merchants could exercise their trade, and, for the sake of the Roman owners, arts and agriculture obtained some protection. Albion became a temptation to the starving Northman and the hungry Scot.

305. Even while Diocletian and Maximian sustained the power of Rome, assaults from the northern regions were made upon the coasts of this enriched and enervated land, and on the opposite and equally enervated land of the Belgians and the Gauls.

306. Carausius gathered a navy (285), the like Britain saw not again for more than twelve hundred years. For a season Britain was sovereign of the sea, but her empire was transient as the genius who founded it, and within a century from his death, her coasts, from north to south, from east to west, except when occasionally rescued from destruction by the presence of the eagles of Julian (360), lay prostrate and a prey; her youth were banded in foreign battles, in the invasion or defence of regions in which she had no interest, to perish in distant lands, while their altars lay desolate, and spoilers ravaged their homes.

307. The destruction of the Roman empire was no permanent loss; it was a necessary check. It was requisite that the stern and ferocious character should be eliminated from what was regarded as civilization in her day. It was hastened by a religion which sapped the foundations on which that empire was built, and substituted the acrimony of ecclesiastical controversy for political skill. The stern habit of the warrior was superseded by the gorgeous garment of the priest. But the fierceness of character remained, and was often exacerbated by religious zeal.

308. The Ostrogoths and the Visigoths, and the Vandals and the Swedes, the homogeneous nations of a hundred names, were closing in the confines and breaking down the



boundaries, and subduing and partitioning the provinces of disintegrated Rome ; and the still more horrible Huns were swarming from the East when the last of the legions (427) left the British shores. The Scots and the Picts overran the province, and the cry of the defenceless people to the patrician Ætius (446) arose in vain.

309. ON THE DISRUPTION OF THE ROMAN STATE, the republics of Italy first present themselves to our attention.

Venice became powerful on the north-eastern coasts in the Adriatic.

Genoa next presents itself as growing into importance in Liguria.

Amalfi attained considerable influence from her situation on the south of that promontory which divides the beautiful Bay of Naples from that of Salerno.

Pisa between the two, on the banks of the Arno, became again the emporium of the trade of ancient Etruria.

Livonia, or Leghorn, arose further south, on the Tuscan coast, where it still maintains a respectable commerce.

Marseilles still flourished, and grew in prosperity, on the south of Gaul.

Barcelona attained a place among the seats of commerce in the southern regions of Spain.

The Euxine, at first under the Tartars, and successively in connection with Venice and Genoa, resumed the commerce which there had settled under the auspices of Phœnicia, and flourished with the colonizations of Miletus and the Asiatic Greeks.

Alexandria, which had grown rich under the Ptolemies, retained a portion of its wealth during the reign of Rome, prospered under the Caliphs, and has maintained, with various fluctuations, an important mercantile station to modern times.

310. The incessant wars which attended the dissolution of the realms of Rome, and raged between the commercial republics and their neighbours, disturbed, and from time to



time altered the possessions of the Mediterranean, the Black Sea, and the Levant; but the transfer of commerce from those regions was mainly occasioned by the maritime enterprise which had sprung up in the Western States, and the discovery of the passage to India by the Cape of Good Hope.

311. During those wars the peoples of the north-west and west of Europe were growing into trading communities, and becoming commercial nations.

312. Before the year 1020 the pirates of Scandinavian descent had intruded themselves into the Mediterranean, and begun to settle in Sicily and the seats of the Tyrrhenians. But they were more inclined to reap than to sow the harvest of trade.

313. RAVENNA, though selected by Augustus as the station of the largest division of his navy, though adorned and furnished forth at enormous expense, and destined for a port of the sea, could not resist the law of Nature. A grove thrives where the ships of the Emperor were harboured, and the silting up of the sands has removed her still further and further from the waters over which she was intended to preside.

314. Whilst a port of the Cæsars, the retreat of their timid successors, the metropolis of the Goth, or the capital of the exarch, Ravenna could not,—and, of course, when the thrall of a pontiff she could not,—become commercial, she could not thrive.

315. VENICE.—The Veneti were an ancient people, probably of the race which had erected the cities of Etruria, and grown great upon the sea. But the plains and marshes north of the Po, formed chiefly of the rich alluvion of many rivers, were the proper seat for agriculture, and ill accommodated for the business of the sea.

316. Their language differed, but their manners agreed with those of their Gallic neighbours. For ages they had maintained their lands and their freedom against those neighbours, and the neighbouring Tuscans, and the Taren-

tines from the South. They had saved Rome by invading the Gauls when the army of Brennus threatened the Capitol.

317. Their domains and their independence yielded to the legions ; but industry and a grateful soil had created cities and opulence in Venetia, until the barbarians came. She lay in the march of, and was plundered and devastated by almost every invader ; but industry endeavoured to restore comfort after wealth had been ravished from her, and she struggled against adversity till Attila with his Huns, the most frightful and ferocious of exterminating hordes, descended upon her plains.

318. The desolation of Venetia was complete. Her miserable inhabitants fled (about 452) to the heaps of alluvion, little more consistent than the mixture of mud and water which lay between them and the shore ; but the shallows afforded protection landward, and intricate shoals afforded protection seaward, and freedom and industry found subsistence in fishing, and the beginning of riches in the manufacture of salt.

319. The deposits, which could hardly be called islets, were rendered firm and connected by incessant labour and skill. In houses alike humble her magistrates were appointed and her citizens dwelt. The vessels grew larger and larger ; they ventured up the rivers, which had belonged, and were destined again to belong, to them, to exchange their salt for clothing and animal food ; they began to venture upon the sea. The spirit of commerce supplanted the genius of agriculture. Within seventy years they appeared a well-organized community, with a considerable merchant fleet.

320. They were respectful to the ruler of the West, they owned faint allegiance to the emperor of the East, but they retained the freedom of their persons, and the regulation of their affairs. The prudent merchant, the adventurous mariner, the industrious artisan, who fled from the troubles of Italy, found in these improving islands safety and a home.

321. In two more centuries her ships were trading in the ports of Sicily, of Syria, of Asia Minor, and the Tauric Chersonese. She brought home the merchandise of China and India, the manufactures of Constantinople and of Tyre, and exchanged them for Baltic amber and for Spanish silver and gold.

322. In less than another century she encountered (804) and routed the armies and navy of Pepin, the mighty leader of the Franks, and thenceforth proudly asserted her independence of the East and the West.

323. But the warriors of Allah, who would acknowledge only one God, who had subdued the idolaters of Asia, and were trampling on the idolatry of Europe, had embarked the Crescent on the sea. All nations quailed before them. The navy of Venice was defeated (839), her city endangered, her commerce dissipated, and her progress for nearly half a century (881) held in check. From this time she began to revive; within thirty years (903) she defeated the invasive Huns, expanded her commerce, in spite of pontifical censures trading with Christian and Saracen alike, and protected it with a formidable naval power.

324. Queen of the Adriatic and adjacent lands, courted by the Emperor and by all desirous of peace, she had now (1081) to protect the waters less against the civilized Saracens than the hordes of rovers from the north, who were clustering upon the regions of Magna Græcia and the Sicilian shores, and ravaging the sea and every ill-defended coast.

325. That protection of the Empire had been requited by possessions and great commercial privileges in Constantinople and the imperial dominions. The Emperor took offence at a refuge afforded by Venice to the Pope; the offence caused the seizure of those possessions and a war, and a victory to the standard of St. Mark, and to the Emperor an ignominious peace. The privileges of Venice were restored and augmented, and she condescended, less in respect for the donor than for the superstition which sanc-

tified the title, to accept from the protected priest the ring with which, in the gorgeous Bucentaur, her Doge went forth to wed the surrounding sea.

326. Venice was ready for any expedition of commerce or war where profit was to be obtained. She sent forth her galleys with the Crusaders, who paid for their passage, to partake in the battle, to take her share, and to purchase that of her thoughtless allies, of the conquests and the spoil.

327. She had become sovereign of Dalmatia and Croatia, she had received Ptolemais and other ports and possessions as presents, and she had (1173) conquered some Italian cities and several Grecian islands for herself.

328. The culmination of Venice was in the Fourth Crusade. Rebellion had seized upon one of her towns. Zara was in arms. Ambition possessed the minds of the merchant nobles, gorged with wealth. The Crusaders could not pay their passage in ducats; they must satisfy their contract by the loan of their arms. Venice had factories to establish, and she had injuries or insults to avenge. The Cross must adventure against the Cross. Anathema must be bribed by the extension of the power and the pride of the priest, by the subjection of the Grecian superstition to the Pontiff of Rome; the needy warriors must be bribed by more substantial plunder than a desolate country and a marble sepulchre could afford,—by the fabulous wealth and magnificence of the gorgeous Empress of the East.

329. Constantinople was won (1203), was plundered, and given to the flames. The religious zealots would not forego their insulted faith. The bigoted Greeks would not be reconciled to the dominion of Rome. They defied the thunders of the Vatican. These thunders were, therefore, hurled against the warriors for the commission of the unprofitable crime. But the sacrilegious warriors had got their, and Venice got more than her, anticipated reward.

330. She became despot of the manufactures and commerce of the Euxine, the Ægean, and the Eastern Sea. Pisa

was allowed a humble participation, but war was denounced against the Genoese. Venice added to her dominions a large portion of the Peloponnesus, and, among others, the island of Crete.

331. During the ensuing sixty years she not only retained, but increased, in alternate victory and defeat, her domination in these eastern seas. The rich cities of Caffa and Crim passed into her temporary possession, but soon to be reft from her by the victorious Genoese.

332. The Adriatic she called her own, and levied and maintained, but with incessant conflicts with Bologna and Ancona, and other states, a transit duty for traversing that sea.

333. Between her and Genoa a fiercer warfare raged, with little intermission, till the power of both declined. In the middle of the fourteenth century her commerce had become restricted; on the capture of Constantinople by the Turks, it expanded and revived; but her dominions were gradually wrested from her by that advancing power, and her Indian traffic diverted by the discovery of the passage round the Cape.

334. In 1242, Venice promulgated a code of laws; but it seems strange that, subsisting by commerce, these laws were little addressed to the conduct of her ships. The code contains some provisions as to freights, averages, and seamen's wages, but the conduct of vessels was probably governed by the usages derived from the Rhodian laws, and exhibited in the collections recognized in Amalfi, Barcelona, and other states.

335. GENOA was the port of the Ligurian Gauls between the commercial regions of Etruria and Marseilles. It must have been often passed, and probably visited, by the vessels of those nations, and, when she possessed Corsica, by the traders of Carthage.

336. But she was not the beloved of Carthage. The first of her historical events was her capture by the brother of Hannibal on his victorious march. During the sovereignty

of Rome, she enjoyed, perhaps, what other ports enjoyed, that dilatory commerce which existed while the spirit of commerce slept.

337. But when all institutions had been overturned, and the relations of nations had become confused, and every city had to trust for safety to her own prowess, and seek her individual gain, protected by a difficult approach, and dependent on the bounties of the sea, Genoa began to take her place among traders, and to enjoy the benefit of her maritime situation.

338. Still, she acknowledged some subjection, or allegiance, to the power which dominated in Liguria, proportioned, perhaps, to its temporary strength; she was included within the realm of the Count from 774 to 874, the period within which she began to accelerate her rise.

339. In 806 she conquered Corsica.

340. In 828, Genoa, Amalfi, and Pisa were carrying on trade with Alexandria, evincing due mercantile respect for the fulminations of Rome against all dealings with the Mahomedan race.

341. In 935, the Saracens seized Genoa by surprise, and, in the absence of her fleet, carried away treasure and captives; but the fleet received information, and pursued, rescued their people and property, and took many Saracens prisoners.

342. Genoa, in 950, began to assume a republican form of government, and in the next half-century extended her trade to Spain, Egypt, Syria, and Constantinople. From 1017 to 1050, sometimes in alliance, and sometimes at war, with the Pisans, she was engaged in Sicily, in Sardinia, and Africa, against the Moors and Saracens, and generally with success. Such had become the ascendancy of Genoa, that the Emperor of Germany, then on ill terms with Venice, congratulated her as the first maritime power, and confirmed with his imperial sanction—which was, perhaps, little more than form—all the possessions she enjoyed,

and conferred on her the more valuable donation of considerable trading privileges throughout all places in his realm.

843. It was not until the Crusades that Genoa conspicuously shone. Her commerce increased with the constant transport of Crusaders and pilgrims to and from the East. Yet she was disappointed in the great adventure of the Fourth Crusade. Venice took the glory and profit to herself. But, after victory and reverses in her wars with that state, Genoa maintained her position, and, by aiding the Greek emperor in recovering his throne from the Franks (1261), acquired the first place in his favour, and (1270) in the commerce of the Euxine and Ægean Seas.

344. It is not for us to detail the scarcely intermitted war between this state and Venice, to which we have already referred.

345. As they grew in commerce they increased in pride, and in their conflicts wasted the affluence which their industry had earned. But Genoa perished in her internal strife; the Guelphs and Ghibelins destroyed each other's palaces, and ruined each other's traffic, in internecine wars.

346. What remained of her fortunes, too, was greatly diminished by the new route of commerce around the Cape.

347. **AMALFI**, which claims the invention, and is probably entitled to the improvement, of the mariner's compass, and which claims also to have first given a code of commercial law to modern Europe, appears on the sea about the year 800. An event which threatened her with destruction,—the attempt of the Prince of Salerno to enthrall the rising town,—laid the foundation of her greatness, in the capture of Salerno, and the extension of this little maritime state.

348. She appears to have obtained about this time (825) the concession of some valuable privileges from the Emperor of the East, the chief source of the luxuries of commerce; and (828) she participated, with Genoa and Pisa, in the trade of Alexandria, which the intelligent unbeliever encouraged, in defiance of the ignorant bigotry of the Pope.

349. In 1020, the Egyptian caliph authorized Amalfians to found houses and factories on the sacred soil of Syria, and there they created that establishment which grew up to the mighty Order of the Knights of the Hospital.

350. But before the end of the thirteenth century Amalfi had gradually declined, and shared the common ruin of the insane and ferocious conflicts of the Ghibelins and Guelphs.

351. PISA AND LEGHORN are the representatives of the ancient Etruscan towns. As Venice occupied the north-east of Italy, and became, as it were, the port for all the interior realms of Germany, Hungary, and Poland, as well as her own domain, and as Genoa was a port for Liguria, and, with her dependent ports, extending almost to the Rhone, the emporium of commerce for a great part of Gaul, and as Amalfi might be deemed the commercial capital of the Campania and provinces of Italy towards the south, so Pisa was the mercantile metropolis for the intervening space.

352. She participated, with Genoa and Amalfi, in the privileges granted by the Moslem in Alexandria, Sicily, and on the African coast. She shared to a less extent in the commercial concessions of the Emperor of the East. She took a small part in the Venetian enterprise in the Fourth Crusade. From the beginning of the ninth century she grew in prosperity and wealth; but, except that her naval power was more conspicuous in the eleventh century, she held a position far inferior to the Genoese and Venetian States. As Genoa grew, Pisa diminished. In the beginning of the fifteenth century her commerce was divided with Leghorn; but still prosperity attended both under the rule of the Medici, whom commerce associated with the European kings.

353. MARSEILLES.—A commercial spirit sustained this ancient seat through the conflicts of Rome and Carthage,



the sovereignty of Rome, and all the troubles which attended her decline. In 538, Marseilles and Arles, with the adjacent country, were ceded by the Goths to the Frank, who had now become master of almost all the provinces of Gaul, and was shortly afterwards recognized as sovereign by the Emperor of the East.

354. From this time she grew in industry and prosperity, and (590) had extended her commerce to all the eastern Mediterranean ports, introducing Oriental luxuries for the broad expanse of France, and, perhaps, such of them as were enjoyed by the regions further north.

355. Nor did her merchants sacrifice their traffic to the conflict of faiths. They traded largely with the Saracens, and the amicable relations established between Charlemagne and the illustrious Caliph Haroun Alraschid, facilitated and extended their commerce with Alexandria and the ports of the East. In that commerce Avignon and Lyons participated, and it was conveyed up the Rhone, and thence distributed through the Moselle and the Rhine.

356. CONSTANTINOPLE.—We must direct our attention for a moment towards the East. Constantinople still retained the name of schools, and some of the treasures of ancient knowledge, which they could not, or would not use. Her artisans were industrious, and fabricated the manufactures which the Venetians and Genoese exported to other lands.

357. THE CALIPHAT.—Literature and science, banished from Christendom, found a royal reception in the Moslem courts. Damascus, and Bagdad, and Bokhara were the seats of learning and taste; and while the Christian monarchs could hardly write their names, the princes of the Caliphate and Samarcand were studying astronomy and mathematics, and making catalogues of the stars. Central Asia and India were the regions of commerce, which they transmitted to the coasts of Syria, where the Phœnician spirit still survived, to the sumptuous Caffa and magnificent

Crim in the Black Sea, and in still greater abundance to Alexandria, which had again become the most flourishing harbour of the world.

358. SPAIN. — The Phœnician and the Carthaginian founded the commerce of the Peninsula, and distributed wealth and civilization along the coast, from where it departs from Gaul in the south to where it rejoins her western bounds.

359. The history of her navigation during the dissolution of the Roman dominion is very obscure ; but from the time when the Moslem emir planted his standard on the shore, an era of prosperity and glory began. The Arabian sciences illuminated her regions, while all beyond was dark. The Moslem temple stood beside the Christian shrine. The votaries of the two faiths, and the friendly Jew, pursued their devotions and their avocations in harmony. They fought in the same cause ; their industry improved, their intelligence enriched the land. The regions of Granada and Andalusia beamed with comfort, and glowed with exuberant wealth. The ports were open to all nations of all faiths, and the wide spread of the Mohamedan empire facilitated the importation from India and the far East. These were the emporia of her own products, the cities were full of activity and manufactures, and cultivation overspread the land. Before the middle of the twelfth century, Lisbon and Almeria possessed manufactories of silks.

360. It was from the mountains of the North that desolation descended upon the civilization of Spain. The barbarians of these mountains, and the reflux Goths, while the Northmen were pillaging Exeter and Paris, began their incursions on the cultivated realms. The story is told by the conquerors. The victories of Navarre, of Oviedo, of Leon, and Old Castile, are sung in the strains of their descendants ; but as their ensanguined banners advanced, science and industry, commerce and civilization were expelled, and a rich and glorious kingdom was laid waste,

until its ruin was completed by the bigotry and persecution of a Christian king and a Christian queen shortly before the discovery of Mexican and Peruvian gold,—a poor compensation for the expatriated industry and arts.

361. During the Moorish domination of Spain (900–1000), those huge vessels began to be constructed, in her southern ports, which formed the models of her great carracks, and led to the increasing magnitude of her vessels of war. Ships which exceeded the largest which the Genoese or Venetians had ever built.

362. BARCELONA.—By the arms of Charlemagne, Barcelona was severed from Spain ; but under her counts and the princes of Arragon the Moor prospered with a liberal Christian government, as under the caliphs of Cordova the Christian flourished in the rich and populous southern harbours of Spain. The merchants (1281) laughed at the anathema, and traded with the infidel, and flourished in defiance of the interdict of the Pope.

363. While the Norman was parting out the fair lands of Albion among his heterogeneous host, and superseding the Saxon by a barbarous law (1068), the magnates of Barcelona, under their illustrious count, were consolidating that system of rules and usages from the Rhodian and Roman laws, and the customs and rules of the Italian and Saracenic States, which laid the foundation of the celebrated code, consolidated and confirmed in 1258, now generally known as “Consolato del Mare;” by the fifty-eighth chapter of which, hospitality and protection is secured to every ship so long as she is on the Catalonian coast. We shall offer a few observations on this and the other collections of maritime law in a future page.

364. VIKINGS.—We can give but a short history of the Vikings of the North, of their romantic adventures, of their progress from their stormy shores to the desolated coasts of the Mediterranean. Their habits much resembled those of the early Greeks. After the repulse which they

sustained from the fleets of Carausius, we hear little of their exploits until the Roman dominion had passed away.

365. The cry from Britain to the Patrician had been in vain. The ravagers were desolating her regions to the borders of the south-eastern coasts. The rich and luxurious inhabitants were defenceless, and called upon the Corsairs for aid. The Corsairs came on their invitation, and called upon their countrymen to follow. They came, incessantly they came, to aid the natives—to expel, to enslave them, and to take possession of their lands. The broad acres of England for centuries sufficed for the emigrants, Saxons, Jutes, and Angles, and afforded some accommodation for Danes.

366. During upwards of three hundred years the Britons and the influent population from the provinces of Rome had cultivated the land, had facilitated internal communication and commerce by roads, of which traces still remain, and by canals, some of which were in after ages imperfectly repaired.

367. They had erected cities and towns and fortresses, and sumptuous villas and mansions, adorned and embellished with tessellated pavements, with baths, with paintings and sculptures, crowded with artisans, and furnished with the manufactories which cultivation and luxury required. Industry was active, although there was only a passive trade. Boundary-walls and camps protected, or seemed to protect, every district of the realm.

368. There were (170) two municipalities, Saint Alban's and York; nine other colonies, Richburgh, Bath, Caerleon, Chester, Gloucester, London, Colchester, Camboricum, Lincoln; and ten towns, which enjoyed Latian privileges, Old Sarum, Cirencester, Durnomagus, Slack, Blackrode, Thornhaugh, Carlisle, Victoria, Ptoroton, and Dumbarton; and twelve stipendiary towns, Rochester, Canterbury, Vindomum, Winchester, Dorchester, Exeter, Caerwent, Carmarthen, Segontium, Caster, Leicester, and Risingham. London and Rich-

burgh were the principal ports: there were also ports at Filey, Dover, Lime, Pevensey, Adur, Porchester, St. David's, and Portus Sistentiorum. Besides these, there were one hundred and forty towns and places of some note.

369. During the 400 years subsequent to the retreat of the Romans, the Pict and the Scot, the Saxon, the Jute, the Angle, the Dane, and the Norwegian pillaged and devastated the lands, depopulated the towns, and left few vestiges of their former magnificence and wealth.

370. The towns, dilapidated and in decay, were replaced by scant assemblages of houses, with rarely a church or royal residence of any more durable material than wood. Still, industry was not exterminated; some of the arts survived, especially those which tended to clothe the savage in gaudy attire, and to decorate him with jewels and gold.

371. The materials for these manufactures were obtained by selling to such merchants as ventured to come among them from a few of the Continental towns, principally from Flanders, the produce of their pastures and wars; their wool, cattle, wax, and honey from the former, and from the latter abundance of slaves. Their internal traffic was carried on by the pedler and chapman. They had never learnt to export even the few commodities which they could manufacture or produce. Occasionally, under better auspices, industry and manufactures expanded a little; a few towns grew into comparative importance, and began to be more visited by trade.

372. There are evidences of early industry in the north-western coasts of the Continent, where, at a period remote beyond authentic record, whole provinces had been rescued, or at least protected, from the sea. After the decay of the Roman power, these and the neighbouring countries, which had sometimes maintained and often contended against that power, became involved in almost constant wars, until temporarily suppressed by the firm hand of Charlemagne. Placed by him under the government of warlike counts,

allegiance dwindled as the Carlovingian predominance declined; and the counts, almost independent of the feudal chief, disturbed the growing manufactories and the rising wealth by contests for dominion among themselves. Still, in Flanders and on the dyke-bound coasts, there was an industrious people who had also some disposition to the sea; and in spite of the wars of their princes, and of the inroads of the roving Yarla, these districts grew more commercial, and perhaps more populous, than any of the north-western states.

373. The southward march of the Scandinavians had ceased. The Ostrogoths, and the Visigoths, and the Vandals had completed their career. A reactionary movement had arisen in the regions of Gaul. The Merovingian dynasties, enfeebled by internal discord, had passed away (751). Pepin, Charles Martel, and Charlemagne had successively extended the empire of the Franks. The march of conquest was reversed (774); the pressure was towards the Baltic, and the dispossessed Saxons and Scandinavians were driven to their ships, and compelled to wander on the waters in search of new homes.

374. Then came the outpouring of the Vikings, the Sea-kings, and the Yarla. The mighty Emperor of the West is no more; his vast dominions are divided and subdivided. England is half ill-consolidated in the line of Egbert, and half contended for by princes unknown even by name. Oviedo is pressing upon Cordova. The Moors have sacked the Eternal City. Italy is desolate, and the Eastern Empire is defenceless and in decay.

375. On the coasts of England, and on the coasts of France, to the gates of Exeter, and to the walls of Paris, to Treves, to Cologne, to Bordeaux, to Seville, to Italy, to Greece, wherever a ship can sail and spoil can be discovered, wherever a province is rich and ill-prepared for resistance, the ravages of the Northmen extend. Here to establish a kingdom, there a dukedom, elsewhere a princi-

pality, everywhere to plunder the sea and depopulate the land.

376. The energy and wisdom of Alfred (one of the most illustrious of princes), and of his scarcely less illustrious son, shed a transient glory over the Saxon portion of England, and for awhile consolidated her power and advanced her cultivation and commercial wealth. The former established a fleet superior to those of the invaders, the first which an English monarch possessed since Carausius had held sway. The second encouraged commerce, and honoured the intrepid mariner with the dignity of Thane. But in succeeding reigns the invasions of the Sea-kings and internal dissensions desolated the unhappy land; and almost as soon as its industry began to revive, and its manufactures and commerce to expand, another invader, the ruthless Norman, came. The northern provinces were laid waste, towns were destroyed by fire, the houses of the people were pulled down,—these the castles of their oppressors replaced. The soldier became master of the artisan, a large portion of the population was enslaved, and villages were desolated to make room for the forest and the chase.

377. But the strong arm of the oppressor secured the country against the recurrence of invasion; and, in defiance of the oppression, the towns began to prosper, and the nation to increase in commerce and wealth, until its prosperity was again checked by the desolations of civil war.

378. Towns which were founded in piracy grew up in commerce, and began to grow more honest as they began to grow rich.

379. Why should they be so distinguished except for superior prowess? The inhabitants of Wenland bore an infamous name; and in the Isle of Wollin, in his harbour of Jomsborg (990), the terrible Palnatoke held his piratical court. His laws were well digested, exact, and particular, and for the regulation of his Berserkers, and of the city which no woman might enter, for directing the capture and

dividing the spoil, a model for the advocate of belligerent rights. Yet Jomsborg grew into a rich and commercial place, the punisher of pirates, until by pirates it was (1170) destroyed.

380. But piracy was never extinguished in these commercial ports. The warlike spirit which it engendered maintained them against their sovereign princes, towards whom their allegiance was intermittent and scant, as well in the Cinque Ports of England as in the harbours of the Scandinavian coasts.

381. Nor was it unaccordant with the principles of the feudal system that the sovereign should leave his great towns and vassals, so long as they performed their services, to see to their own safety and affairs, and to do battle for themselves; and as some of the powerful feudatories yielded little more than a nominal obedience to the suzerain, and not unfrequently withheld even that, so many of the cities, when they attained sufficient power, held themselves, except in the stipulated services, almost independent of his control. It moreover became a familiar practice, both in England and on the Continent, for the emperors, kings, palatines, and other princes, to confer on their principal towns charters of liberties and privileges; some of which placed the ports, harbours, fortifications, and adjacent country under their jurisdiction.

382. We do not propose to give the history of the foundation of the principal seats of commerce in England and on the Continent. Their origin, for the most part, is as obscure as that of Carteia or ancient Rome. But we shall present an incident or two in the history of the most conspicuous of them, from which may be gathered a vague notion of the general state of Europe so far as navigation is concerned.

383. In England, as already mentioned, the Romans had left many opulent places, which fell speedily into decay; but a few of them in some degree revived during the period of



even the earlier Saxon Kings. Their commerce consisted in the few manufactures which still remained and occasionally flourished, and the natural products of the land. Their mines were wrought to some extent, and it is said that those in Cornwall were at one time worked by the Moors, who appear to have had possession of St. Michael's Mount and a part of the adjacent coast. We hear of manufactures in jewellery and the precious metals, in tapestry, and (674) even in glass.

384. London, mentioned by Tacitus as celebrated for the frequenting of merchants, had participated in the common decay, but had (from 630 to 730) begun again to revive, and within this time stone began to be employed in building houses which had previously been constructed of wood. It was destroyed by the Danes, but Alfred (878) restored and advanced it to a more prosperous state. In 994 it defended itself valiantly against the Danes, who, unable to pass the bridge which then spanned the Thames, cut a canal on the northern side, and thereby conducted their vessels to attack it on the west. At that time probably, certainly not long afterwards, for it was distinctly recognized in 1070, it had jurisdiction over almost all the navigable portion of the Thames. In 1156 it contained a population of above 30,000. The houses of the nobles adorned the banks of the river from its western boundary to the royal palace at Westminster. It was begirt with walls and entered by seven gates. It then derived luxuries in abundance from the European coasts to Norway and Russia directly, and from India, Arabia, and Egypt, principally through the Venetians and Genoese. In 1377 its population was 34,000, while that of all England was about two millions and a half.

385. On the northern and eastern coasts, Newcastle, Whitby, Scarborough, Hull, Yarmouth, and a number of towns, the maritime achievements of which we shall have to record, were growing up. Their export trade however arose slowly; some of them began to prosper by attention to

the fisheries, which were at first almost exclusively enjoyed by the people of the opposite shores.

386. In the beginning of the twelfth century, English manufacturers derived a great accession from the settlement in the northern provinces of many Flemings, familiar with the woollen manufacture, and not unfamiliar with arms, driven from their own homes, perhaps from the immersion of a vast extent of their country, which formed or enlarged the area of the Zuyder Zee. The warlike portion of the immigrants were removed to, and provided with settlements on the south-west coasts of Wales; the greater number of the industrious portion remained and laid the foundation of the woollen factories of the North.

387. The Cinque Ports originally consisted of five towns, as their name implies, but by the addition of dependent members their number increased. They had formed a confederacy for commerce, defence, and piracy before the end of the Saxon era,—a confederacy which, with all its privileges, they for centuries right manfully maintained.

388. Though Liverpool was but a village in 1229, Bristol had, even early in Saxon times, attained considerable importance as the principal trading-station of the West.

389. Southampton, and Dartmouth, and Plymouth, and smaller ports had grown up along the southern coasts; but the great harbour of the fighting-vessels was Fowey.

390. The dawn of arts, manufactures, and commerce in Scotland was in (1147) the reign of David I. Its progress was slow and interrupted. It engaged, like all the northern districts, in the ravages of piracy, which it more frequently sustained. In 1210, King William granted a charter to his city of Perth, then the capital of the realm. Berwick appears to have been the principal seat of the little commerce it enjoyed. Here, in 1285, the Flemish merchants established a factory, which tended considerably to the prosperity of that port. The salmon of its rivers had already become a considerable subject of export. In 1286 the Royal

Navy consisted of a single ship, and the subsidiary assistance of five with forty oars each, which the King of Man was bound to supply. Even up to 1384, Edinburgh seems to have contained hardly 400 houses, thatched with straw; but perhaps few houses had at this time a better roof.

391. Hamburg appears to have been a thriving town in 845, when it was burnt by the Danes. After having been several times destroyed, it was rebuilt in some degree of splendour in 1013; but its houses were still principally of wood. In 1189 it received a charter from the Emperor Frederick, exempting its commerce from all tolls, except the transit charges on passing the city of Stade.

392. Zirczee, in the island of Schowen, is said to have been founded in 849. Its inhabitants became the most famous navigators and merchants of Holland and Zealand, and enjoyed an extensive trade. They are said to have engaged in the herring fisheries so early as 1165, and to have enjoyed a great trade both northward and southward, until their harbour was choked with sand.

393. Drontheim (under the name of Nidaros) was founded by Olaf Trygvason about 996, and Bergen in 1070, by Olaf the Peaceful.

394. Lubeck was created a mart of commerce by Adolphus, Earl of Nordalbing (1140), or rather, perhaps, re-peopled by emigrants from Flanders, Holland, and Friesland, flying from the desolation of war. Notwithstanding its almost entire destruction by fire in 1158, it rapidly advanced in prosperity, and became one of the originators of the Hanseatic League. Within twenty-five years, we find it in active commercial connection with the Genoese.

395. In 1160 Riga was founded by merchants from Lubeck, and in 1228 was surrounded with a wall.

396. In 1160, the then village Rostock, whose beginning is ascribed to a much earlier period (329), grew up, on the destruction of the city of Kessin, into an important town.

397. In 1165 Copenhagen first appears, growing into a considerable port.

398. In 1201 Antwerp was first surrounded by a wall, but had manifestly already become a prosperous place. In 1313 it was appointed the staple for the export of English wool.

399. In 1203 we find the ancient city of Cologne in commercial relations with the English ports. In 1220 the German merchants, principally from this place, purchased ground in London, and established their Guildhall, afterwards the Teutonic Hall of the Hanseatic League.

400. In 1205 Amsterdam first appears, not much more than a village, but growing soon afterwards into an important mart.

401. In 1240 Wismar arose from the ruins of Mecklenburg, which had been destroyed by incessant wars.

402. Bruges must have been for centuries the chief, or one of the chief seats of that commerce which arose from the manufactures of the Flemings. In 1262 it was one of the principal, if not the principal staple of the Hanseatic League; a position which it maintained until the Emperor Frederic III. blocked up the port, and caused the transfer of the trade of that society to Antwerp.

403. In 1268 Theodoric, Earl of Lundsburg, granted a charter to Leipsic, with freedom of commerce to the merchants of all nations, notwithstanding the existence of war between their sovereigns and himself.

402. In 1295 Dantzic was first enclosed by a wall, even this was of plank; it was first replaced by one of stone in 1343; but for another half-century it had only one house of brick, in which the magistrates assembled; the rest were of mud, thatched with reeds.

405. WISBY.—The island of Gothland in the Baltic, situate midway between Sweden and Courland, with a commodious harbour on its western side, and a climate more genial than the neighbouring lands, independent, or almost independent, of any continental power, offered an asylum for industry and commerce. It had grown unobserved,

until the destruction of Winet and Julin on the Oder had tended to its advancement, and the conflagration of Sleswick, in 1288, to its sudden increase. Even here, against the scanty population of this small island, it was necessary to protect the accumulations of commerce by ramparts and arms. The merchandise and arts, not only of all Sweden, Russia, Denmark, Prussia, Finland, Vandalia, and Saxony, which touched the surrounding seas, but also of Scotland, England, Flanders, France, and Spain, enriched the sumptuous merchants of Wisby, and adorned their marble halls. For about a century and a half, in the alliance of the Hanse, she reigned mistress of the Baltic, and prescribed the laws which commerce still reveres. But her station was too remote for enduring commercial empire, even had she not fallen a prey to piratical sovereigns, to piratical adventurers, and to the piratical Teutonic knights, who, in the beginning of the fifteenth century, sold her ruins to the Swedish king. A village and a legal code preserve her name. The code of Wisby was later in date than those of Barcelona and Oleron, which prescribed the law to the mariners of the Mediterranean and the West. Wisby was the legislator of the Northern Sea, of the Russian, the Prussian, the Dane, and the Swede.

406. The inland cities of France and Germany are unconnected with the subject of this work. The German had hardly a seaport. After the ninth, the King of France had for several centuries no actual dominion in the neighbourhood of the sea. On the south were Marseilles, of which we have already spoken, Narbonne, for awhile her transcendent rival, and Arles, besides the ports which were subject to the Genoese. On the west was Bordeaux, flourishing from the first visit of the Romans to the present time. In 1472 it passed from the English monarch into the direct and permanent dominion of the King of France. From this, and Bayonne, and other ports on the west, some commerce at all times was carried on with England and the

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north of Spain. But after the fall of the Veneti navigation was not a characteristic of even the coast population of France.

407. OLERON, an island opposite Poitou, not far north of Bordeaux and Bayonne, enjoyed commerce, and enjoys perpetual fame in a collection of judgments and usages, known, among other names, as the "Role of Oleron." Its lawyers and merchants appear to have made this collection (about 1190) from their own observances and convictions, and the information as to Rhodian, Roman, Italian, and Saracenic institutions derivable from the code and the collections of Amalfi and Barcelona. Common acceptance, not regal authority, has made it part of the European law. The adulation which follows kings, and heaps upon the worst and most ignorant of them the credit of the best and wisest inventions, has attributed these rules to Richard Cœur-de-Lion, who, whatever his achievements with the mace and the battle-axe, was as ignorant of law and as reckless of its observance as the ferocious animal from which he acquired his name. The collection was progressive, and not completed till about 1266. (See Bouchard, i. 119, 120, 126, 130, 133.)

408. HANSE.—The Cities of the Sea. This, the greatest of mercantile confederacies, originated in necessity, at an uncertain date. The supreme sovereigns were so feeble, the princes so turbulent, the banditti—and to that class many of the barons belonged—so powerful, that the towns were obliged to arm and protect themselves; at times, in alliance, confronting an emperor; at times, single-handed, encountering their own immediate lords. The name of Hanse does not occur until long after the federation had been formed.

409. Of its mode of doing battle, and of its dealing with sovereigns, we shall give some instances in speaking of piracies, and the treaties by which they were partially atoned. Its system of government does not belong to such

a book as this. We shall give a few indications of its early character and growth.

410. The surprising feature of this institution is, that it consisted of associated places, each of which owed obedience to some superior, who not only was not comprised in, but was sometimes at war with the league. Yet this condition was not singular; there co-existed with it such societies as Freemasons, and also the martial orders of the Temple and the Hospital knights of all nations, ready, under the banner of their Grand Master, to encounter their liege and sovereign lords.

411. Town after town joined the confederation, and occasionally transgressing towns were expelled, and occasionally readmitted on making atonement for their offence. They had a kind of metropolis, sometimes changing the seat of their conventional government, generally regulating affairs of commerce, not unfrequently issuing the mandate of war,—of war against princes, the Emperor, the King or Queen of Denmark, of war against the English crown, and sending the edicts of sovereignty over the sea. They sometimes demanded and maintained exemption from the hostilities in which their respective rulers were engaged.

412. Foreign sovereigns, too, were taught to respect the opulence and forces of these allied towns, and not only with the confederacy, but with some of its greatest members, entered into treaties, regardless of the superior chieftains' assent.

413. The connection of some of the Flemish towns with England began at an early date; their chief manufacture was supplied by English wool. Cologne had a factory in London. We have already mentioned the foundation, in 1220, of that which afterwards became the Teutonic Hall.

414. Lübeck and Hamburg, in 1241, entered into arrangements for the maintenance of forces both at sea and on land for the protection of their trade against pirates and robbers, more especially on the inland route between those.

towns. As Bruges, then a flourishing city, was, in 1262, appointed their staple, several towns must by that time have acceded to the league. In 1270 they established a northern staple at Bergen, which increased rapidly in prosperity. At this time Rostock, Bremen, and Daventer were within the association; and as during the internal dissensions of Germany many of the cities had found it necessary to take their safety into their own keeping, and had become important, and assumed, and to a great extent maintained, the title of Free, and (in 1273) the number of the free and imperial cities had increased, and their privileges had been recognized by the Emperors, several of them also had probably become members of the Hanseatic League.

415. In 1280, and again some years afterwards, the King of England confirmed the Hall and privileges which his predecessors had conferred upon them. They appear to have had their alderman and council, and to have been under the obligation of maintaining and supplying one-third of the number of men for defending the city gate, called Bishop's Gate. In 1282 a distress was laid on their alderman, and other merchant citizens of Cologne, Triers, Trivon, Hamburg, and Munster, for 210 marks to make good the repairs.

416. In 1288 Wisby, of which we have already spoken, appears to have become a member of, or closely allied to, this association, which in 1315 is distinctly mentioned under the name of Hanse.

417. From this time it held a commanding and almost independent position, and, with vicissitudes of prosperity and depression, of victory and defeat, maintained frequent peace and occasional warfare with the nations of the North. In 1331 the Teutonic Knights settled in Prussia, and not long afterwards entered into an alliance, at times intimate, with this powerful league.

418. In 1369 it compelled Waldemar, King of Denmark, to sue for peace, and to deliver into its possession



the greater part of Schonen for fifteen years, that it might receive the revenues in compensation for the injuries it had sustained.

419. In 1473 a general pacification appears to have taken place between the King of England, with the confirmation of Parliament, and the Hanse Towns. It was settled by commissioners from the King on the one side, and on the other two or three commissioners from each of the cities of Bremen, Hamburg, Dortmund, Munster, Dantzic, Davenport, Campen, and Bruges, the secretary of the merchants of the Hanse in Bergen, and also the secretary of the merchants of the Hanse in London. It involved satisfaction and oblivion for past offences, a ratification of existing, and grant of further privileges, the exemption of the Hanse merchants from the English Admiralty, and a conveyance by the King to the Hanse of the courtyard called the Steelyard, with the adjacent buildings, together with the Teutonic Guildhall, with other privileges. If any town should be dismembered from the Hanse, the King was, on notice, to exclude it, until readmitted, from the benefits of the treaty, and the Hanse was still to have the keeping of Bishop's Gate.

420. In 1475 Cologne, which had been for some years excluded, was readmitted into the association.

421. At this time the confederacy was divided into four classes, or regions.

Lubeck was the head of the whole confederacy. To this city were annexed Hamburg, Rostock, Wismar, Stralsund, Lunenburg, Stettin, Anclam, Gohnau, Gripswald, Colberg, Stargard, and Stolpe.

Cologne was the chief of the second region, which comprised Wesel, Duesburg, Emmerich, Warburg, Unna, Ham, Munster, Osnaburg, Dortmund, Soest, Hervorden, Paderborn, Lemgow, Bielefeld, Lipstadt, Coesfeld, Nimeguen, Zutphen, Buremond, Arnheim, Venlo, Elburg, Harderwick, Davenport, Campen, Swolle, Groningen, Bolswert, and Stavern.

Brunswick, the capital of the third region, had under its jurisdiction, Magdeburg, Goslar, Einbeck, Göttingen, Hildesheim, Hanover, Ulsa, Buxtehude, Stade, Bremen, Hamelen, and Minden.

Dantzic, the chief city of Prussia, was at the head of the fourth region, consisting of Königsberg, Colmar, Thorn, Elbing, Brunsberg, Riga, Dorpt, Revel, and several towns in Slavonia.

There were also some cities whose right to the privileges of the Hanseatic Association was controverted, viz., Slendale, Soltwedale, Berlin, Brandenburg, Frankfort on the Oder, Breslau, Cracow, Halle, Achersleben, Quedlinburg, Halberstadt, Helmstadt, Ryla, Nordheim, and Dinant.

Their four chief factories were in Novgorod, London, Bruges, and Bergen. All the merchants of the Hanse had a right to trade in those factories, and to participate in the general privileges of the confederacy.

422. Some one or more of the English ports appear to have been treated as forming members of the Hanseatic confederacy. Thus Lynn is so described in a letter from King Henry to the magistrates of Bergen in 1411, and the Secretary of the Hanse in London was a party to the treaty of 1473.

423. It may appear to the reader surprising that scattered towns should have attained so great an ascendancy, and that a confederacy so extensive should have grown up; and it will appear to him more strange that small seaports should have practised piracy so boldly, in defiance of the sovereigns of the great European states. But when he shall have considered the position of not only the greater vassals as to their suzerains, and the insolence with which even petty barons carried on their private wars, and when he shall have been informed of the dependence of the monarchs on the seaports for the formation of a navy, he will see how impotent they were to control the maritime exploits of their subjects.

424. PIRACY AND CONVENTIONS.—These seem to be uncongenial associates, yet their association was very intimate, and the history of the former comprises a conspicuous portion of the latter; for piracy, and the compensation for piracy, were the chief causes and subjects of conventions.

425. The confederation of the Cinque Ports was as hostile to commerce as any league of Vikings or Malays. Each port of England, in the excess of its power and the overplentitude of its chartered rights, all round the coast, at least from Scarborough, the terror of the Scots, to Fowey and even to Bristol, exercised its prescription of arming for the sea. Nor were the English the only buccaneers; port after port of Scandinavia, and the Continent as well, though not to so great an extent after, as before it became united to the Hanse, and the Hanse itself, asserted, and efficiently, its belligerent rights of embargo, reprisal, and appropriation.

426. We can give only a few specimens of their exploits and pacifications: the original documents will for the most part be found in the valuable collection of Rymer (*Fœdera*), and their essence in that invaluable book Macpherson's '*Annals of Commerce*,' to which we are infinitely obliged.

427. The mariners of the Cinque Ports were notorious for their piracies, especially when the English Government was weak, or involved in war. They sometimes carried on private hostilities against places with which their sovereign was at peace. Nor were the Cinque Ports, though more conspicuous, the only offenders in this respect.

428. In 1220 the Cinque Ports were engaged in private war with Calais; in 1237, and again in 1277, with Bayonne. These excesses were occasionally restrained (1264), but the war with Bayonne was only terminated by the interposition of Edward I., who paid the people of Bayonne a hundred pounds for the peace.

429. In 1278 Edward I. confirmed to the Cinque Ports privileges recited as having been enjoyed by them in and

from the time of Edward the Confessor, and fixed their marine service at fifty-seven ships for fifteen days. Each was to be properly manned with a master and twenty men and a boy. They were bound to continue their service so long as the King should require it, on receiving pay.

430. In 1280 a war sprang up between the merchants of London and those of Zeland, which lasted five years; and in this case the King authorized reprisals. It was at last settled by the Earl of Zeland making satisfaction for the original injury, and the King of England ordering the captured property to be restored.

431. In 1292, in consequence of a squabble between some English and French sailors about a well, the Cinque Ports of their own authority fitted out sixty ships, attacked a French merchant fleet of two hundred, loaded principally with wine, took almost all the vessels, and destroyed the greater part of the crews. This exploit led to a general war.

432. In 1293 an end, or rather a respite was obtained, by the intercession of the King, to a series of hostile exploits between the English and the people of Bayonne, Portugal, and Spain, in one of which fifteen Spanish vessels were carried into the English ports. Notwithstanding this pacification (1295), a merchant of Bayonne, who had anchored on the coast of Portugal with a cargo of 174 baskets of almonds, 150 boxes of Malaga raisins, and 490 flayons of Malaga figs, was taken by pirates and carried into Lisbon, where his property was sold, and the King of Portugal received one-tenth of the produce, and the merchant was injured to the amount of £700. So runs the first letter of marque of which we find a record. Therefore the King's lieutenant of Gascoigne granted to the merchant and his heirs license to seize the property of the Portuguese, especially of the inhabitants of Lisbon, wherever it could be found during five years, or until he should be reimbursed his losses and expense.

433. In 1297 the earliest precautions of which we read

against piracy, were contained in the treaty between England and the Earl of Flanders,—that all ships should have letters sealed with the common seals of the towns to which they belonged, testifying that they really belonged to those towns; and that the ships of Edward, whether of his English or French dominions, should carry his arms in their colours, and that the Flemish ships should carry the earl's.

434. About this time (1308–1309) private hostilities appear to have been carried on between the people of Bayonne and some of the towns of Castile, in which the sovereigns of the countries bore no part, except in endeavouring to obtain peace by mediation with their subjects, whom they appear to have been unable to command. In the course of these hostilities some English vessels were taken by Castilians under Portuguese colours.

435. About the same time the Easterlings, as they were called, the vessels from the Baltic, were accused of depredations on the Scotch coast. Complaints were made to the Earls of Namur and Flanders; complaints were also made of Norwegian ships; indeed, all the shipping appear to have been occupied in endeavours to capture each other. Treaties and conventions were made, but disregarded. Notwithstanding the closest amity which existed between England and France, in 1315 the ships of Calais attacked and carried into that port four English vessels sailing with wool to Antwerp, and with their boats attacked another English vessel so loaded, lying aground near Margate, and carried her also into Calais.

436. In 1333 the sovereigns of France and Aragon, appearing to have become conscious of the mischief of granting letters of marque, engaged with each other not to grant them unless justice should be denied by the sovereign of the aggressors; and made regulations for the amicable determination of claims in respect of improper captures. But about the same time the King of Aragon granted to one of his subjects a letter of marque for £2000, Barcelona money,

with 11,338 shillings for interest, and £100 for his expenses in journeys to England.

437. In 1325 we find the King of England entering into a treaty, not with the Earl of Flanders, but with the towns of Bruges, Ghent, and Ypres, for the continuance of a truce with them and the other towns of Flanders, and for various modifications of the previous conditions of their trade.

438. In 1353 we find the King of England entering into a treaty with the merchants, mariners, and communities of Lisbon and Oporto, irrespective of the King of Portugal, for an alliance for fifty years, during which neither was to assist the enemy of the other, but the ships of each were to have free admission to the ports of the other. Past injuries were to be forgotten, future were to be settled by arbitration, and the goods of the merchants of Lisbon or Oporto taken by the English were to be restored, unless the owners were assisting the enemy.

439. In 1378 we find two subjects, the one of Scotland, and the other of England, not only carrying on a petty warfare on their own account, but, without troubling their respective sovereigns, undertaking the belligerent business of their states. Mercer, a Scottish merchant, in his voyage from France, driven by stress of weather into Scarborough, was imprisoned in the castle till released by order of the King. His son, in revenge, collected a fleet of French, Scots, and Spaniards, and levied black-mail on the English seas; whereupon one Mr. Philpot, a London citizen, fitted out his fleet with a thousand men, and took Mercer with fifteen Spanish vessels richly loaded, together with the prizes they had made.

440. In the latter part of the fourteenth century and the beginning of the fifteenth, the English appear to have peculiarly distinguished themselves by their achievements of appropriation on the sea, and to have captured with equal impartiality the well-laden vessels of all nations, French, Flemish, Spanish, and those belonging to the Hanseatic League.

In 1385, the governor of Calais and the seamen of the Cinque Ports took above 800 vessels of all classes from the French. In 1386, they fell in with some Genoese laden with wines, spices, stuffs of gold and silk, gold, silver, precious stones, etc., on their voyage to Flanders, and of course took them for condemnation into one of their ports (Sandwich). In this instance they were obliged, through communication with the King, to restore the prizes, with compensation for the damage they had sustained. In 1387, the Earl of Arundel fell upon and captured 126 of a vast fleet of Flemish, French, and Spanish vessels, laden chiefly with wine. Dartmouth had signalized itself by taking some rich vessels, including Clisson's sumptuous barge; as a reward perhaps for its intrepidity (in 1389) a general privateering commission was granted to the people of that town. Nor were its people slow in exercising the functions bestowed upon them. In the same year one of its merchants fitted out an expedition, with which he captured thirty-three vessels, loaded with about 1500 tons of Rochelle wine.

441. In 1393 we find another grant of letters of marque. One Collyng alleged that merchants of Plasencia, in the north of Spain, had plundered him to the amount of £3200; thereupon the King of England imprisoned all the Plasencians in England, and granted Collyng letters, authorizing him to make reprisal to that amount, by taking any vessels belonging to Plasencia.

442. In the same year, the King licensed three large war-like ships of Lynn, with their commanders and mariners, to enter into the service of Margaret, Queen of Norway, Sweden, and Denmark, against the Hanse Towns, by whose navy she was hard pressed.

443. In 1403 we find the Hanse towns of Bruges, Lübeck, and Hamburg complaining of the capture of their vessels by the mariners of England and Bayonne. The mayor of Bayonne had detained their prizes in defiance of the King's order to restore them. The pirates of Whitby had taken two

Danish vessels; and those of Cley had seized some Scotch vessels, and for awhile retained them, in defiance of the King's order for their restoration.

444. Indeed the maritime power of the Sovereign was so feeble, that those who chose to fit out armed vessels were under little if any restraint. Parliament committed the guard of the sea, from the 1st of May, 1406, to the 29th September, 1407, to the merchants, under the obligation of maintaining 2000 well-armed men and 1000 mariners; and appointed an admiral of the north, and another of the south, to be invested by the King with the usual power of admirals to take up vessels, press men, and appoint deputies; and assigned to them a portion of the revenues to maintain the undertaking. The funds however fell short, and the guard was ill-observed.

445. The Hanse Towns, or some of them, among which Bergen was particularly conspicuous, appear to have carried on a predatory warfare (1390–1415) against the English shipping in the north seas, even those trading with other Hanse towns,—apparently with the view of excluding their commerce from those regions.

446. In 1412, Ghent, Bruges, Ypres, and the free territory of Flanders, entered into a convention with Henry of England, to maintain the peace and commerce between them, notwithstanding hostilities between the King and the Duke of Burgundy, their Earl. In 1416, the Duke renewed a truce with Henry, which was to be observed, notwithstanding war should arise between Henry and the King of France, the sovereign of the Duke.

447. In the same year Henry renewed a commercial treaty with Prussia: certain sums were, on the one hand, to be paid to Prussia for outrages committed by seamen of Scarborough, Hull, Blackney, Cromer, Dartmouth, Plymouth, Calais, and Bayonne, and a vice-admiral of England; and, on the other hand, to England, for an outrage committed by a Dantziker; and it was agreed that for future injuries the sovereign of the aggressor should make satis-



faction, or any of his subjects should be liable to arrest in the country of the injured mariner.

448. In 1412 letters of marque were granted to Waldern and others, merchants of London, to take all Genoese vessels for the reimbursement of £24,000, the alleged amount of their losses, and £10,000 for damages. The Genoese had deliberately captured and sold in Genoa the ships and cargoes of these merchants, who had ventured upon one of the first mercantile expeditions from England to the Mediterranean States.

449. In 1409 the King of England on the one hand, and the Grand Master of Prussia and the Hanse of the other, came to a general account and reckoning, in respect of the reclamations of their subjects for their misbehaviour on the sea. Merchants of Hull, York, London, Colchester, Yarmouth, Plymouth, Cley, Lynn, and other ports, all brought in their bills for ships or cargoes taken by merchants of Prussia or the Hanse; and on the other side, the merchants of the Hanse and of Prussia presented similar accounts. All had also reciprocal claims for violated privileges. The balances were struck, and King Henry gave his obligations to the Grand Master for upwards of 30,000 nobles, payable by instalments, and the Grand Master became bound in 766 nobles to the English merchants, whose claims had been preferred for twenty or thirty times that amount. The Hamburgers and those of other Hanse towns suffered also a vast reduction on their demands. In this account Wismar and Rostock seem to have been most distinguished for their plundering exploits.

450. In 1430 a truce for a year was concluded between England and Castile, one of the terms of which, to prevent piracies, was that no armed vessel should sail from the port of either country until sufficient security had been given to abstain from hostilities against the subjects of the other, and not to carry any prize into any port except that from which she was fitted out. And in the same year a

truce was made between England and Scotland, in the terms of which it was stipulated that receivers and encouragers should be liable, as well as principals, to punishment, and to make compensation for acts of piracy; and that the aggressions of the subjects of either sovereign should not occasion a breach of the truce.

451. In 1437 King Henry of England concluded a treaty with the Grand Master of Prussia, the cities of Lübeck and Hamburg, and the other Hanse towns, by which, among other provisions, the merchants of Prussia and the Hanse were to be exempt from the jurisdiction of the English Admiralty (so high an opinion of its character had been already formed), and to have their causes tried summarily by two judges, to be appointed by the King; and it was stipulated that the inhabitants of the port from which any ship sailed should make compensation for any piracies she might commit, and that security should be taken from every armed vessel before she was permitted to leave her port.

452. In 1440 some of the mercantile cities of Holland, with the consent of their Duke, entered upon a war of reprisals to the amount of 50,000 gold florins, against the Hanse cities of Lübeck, Hamburg, Wismar, Rostock, and those of the Sound, who were assisted by Prussians, Spaniards, and Venetians, and took twenty large hulks, three Prussian carracks, and a great Venetian carrack richly loaded, by way of compensation for the losses alleged to have been sustained.

453. In 1482 we have another instance of a treaty between a town and a foreign sovereign. The inhabitants of Guipuscoa, in Spain, with the consent of Ferdinand and Isabella, entered into a convention with the King of England for mutual freedom in trade, reciprocal security for the good conduct of their respective ships, and a stipulation that if letters of reprisal should be issued by the English or Spanish sovereigns, the English cruisers should spare the Guipuscoan vessels, and that the Guipuscoans should not permit Spanish letters of reprisal to be exercised against the English within their waters.

It may not be improper here to remark, that, as the kings had no navy by which they could secure redress for injuries offered by foreigners to their subjects, one only of two alternatives was open,—to allow the injured party to obtain satisfaction by his own prowess, or to summon all the private ships of the nation for a general war. The obligation to procure such letters was some restraint on the general license of the times. Indeed, the mariner injured, or who pretended to have been injured, most frequently endeavoured to do himself justice without requiring his sovereign's consent.

454. SHIPS AND FLEETS.—The strong and lofty ships of the Veneti, already described, were probably built from models introduced by mariners from Marseilles—for not such were the rest of the vessels which skimmed the waters of the Gael—nor such were the war-craft in which the Scandinavians encountered the sea.

455. The Veneti were destroyed by the Romans, and although Latian galleys afterwards guarded the Gallic and British coasts, the ships of commerce were few, and with the legions the maritime armament disappeared.

456. The Saxon invaders came in vessels of hides; they were superior to coracles (beyond which the naval architecture of the Britons does not seem to have advanced, for they were not a sea-loving race), but daring indeed were the mariners who ventured to embark in such contrivances on the stormy waters of the Northern Seas, although they may have had keels of wood and ribs a little larger than hoops.

457. The swarms which succeeded the Saxons,—the Sea-kings and the Jarls,—came in ships long, low, and narrow, but with lofty prow and towering stem, from which the missiles might be more effectively sent. The armed prows were adorned with quaint and gaudy figures; the breast-works were rows of shields; a single mast with a single sail occasionally aided the efforts of one long tier of oars. The

arch-pirate and the chiefest of his captains occasionally erected two poles for masts, yet each in general bore only a single sail. The battle was the rushing of the vessels against each other, the shock of the pointed beaks, the flights of arrows, the hurling of stones and darts, the grappling together, and the boarding with the sword and the pike.

458. In after times, we hear of smaller vessels chained and bound in pairs, the better to sustain the violent impulse of the larger ships of the foe. Such was the unfortunate manœuvre of Svend, King of Denmark, in the battle in which he was (1064) terribly defeated by Harold Hardrada, the Norwegian king.

459. We are informed that Alfred constructed vessels much larger than those which infested the English seas; but the account of them is so vague as not to enable us to give any description of their magnitude or form.

460. The fame acquired by Athelstan (938), through his signal defeat of the combined forces of the Kings of Scotland, Northumberland, Cumberland, and the Norwegian kings of Ireland and the Isles, was recognized by presents from foreign princes, and among them of a magnificent ship from the King of Norway, with gilded beaks, a purple sail, and sides adorned with gilded shields.

461. Olaf Trygvason, King of Norway, after his repulse before London (996), began to build war-ships far exceeding in dimensions any which had been commonly used in the North. Among them is mentioned the 'Dreki,' or Dragon. Her keel is said to have measured 74 elns, about 111 feet; she had 34 benches for rowers, and was as high as the loftiest commercial ships. Of course, her head and stern were richly decorated, carved, and gilt.

462. It is said that the fleet or assemblage of vessels collected by Harold to resist the invasion of William, exceeded 700, and that the Norman counted a larger force; but numbers were inconclusive evidence of maritime strength. Before this time (1066) and long afterwards, several of the English

ports were bound to furnish a certain number of ships, for a limited period, to their immediate lord. Dover and other Cinque Ports were each bound to supply twenty, with a crew of twenty-one men for each, when the king embarked in war. Indeed, to a much more recent period, the sovereign had no navy; he had scarcely a ship of his own; the men-of-war were improvised out of the merchant service, as their crews have been in modern times, and the natural instincts of the sailors of those days facilitated the equipment of an invasive fleet. The navy estimates were not so onerous as at present: they amounted in 1208 to the price of 1000 oars for the galleys; and in 1213 to £2. 6s. 8d. for maintaining the royal fleet at Southampton, and 12s. for the support of "the other ship."

463. The Crusades led to the first naval expedition of England beyond the waters which wash her shores. Gathered from all quarters, and fantastically decorated for a fantastical occasion, was Richard's fleet—13 great busses or dromons, each carrying three masts, and on each mast a broad sail, 50 galleys and 100 transports, with 106 other ships, which were assembled at Lisbon to join him on the way. Their rostra were glittering in gilt and gaudy colours; the bulwarks were hung with shining shields, and standards, flags, and pennants were fluttering over their decks. They were impelled by sails and oars. This vast armament, by prodigious efforts, and under threat of crucifixion to the faltering crews, captured a solitary Saracen of alarming dimensions and carrying 800 men.

464. The first naval victory of England was won by the ill-famed John, and achieved after the fashion of Lysander's conquest of the Athenian fleet. The Pope had revoked his edict for the invasion of England, and Philip directed his interdicted arms against the Count of Flanders, the ally of John. That monarch sent 500 vessels to the aid of his ally (1213), and while the French were ravaging the land, seized 300, and burnt another 100 of their deserted ships.

465. This magniloquent sovereign, even before he won

this clandestine victory, had asserted dominion over the sea in a proclamation curious enough to be given somewhat at large. "If the governor or commander of the King's navy (so runs the writ of 1200) shall meet any ships whatsoever by sea, either laden or empty, that shall refuse to strike their sails on the command of the King's governor or admiral or his lieutenant, but make resistance against them which belong to his fleet, that then they are to be reputed enemies, if they may be taken; yea, and their ships and goods be confiscated as the goods of enemies. And that, though the masters or owners of the ships shall allege afterwards that the same ships and goods do belong to the friends and allies of our lord the King. But that the persons which shall be found in this kind of ships, are to be punished by imprisonment, at discretion, for their rebellion." It was accounted treason, says Selden, if any ship whatsoever had not acknowledged the dominion of the King of England in his own sea, by striking sail; and they were not to be protected upon the account of amity, who should in any wise presume to do the contrary. Penalties also were appointed by the King of England in the same manner as if mention were made concerning a crime committed in some territory of this kingdom (Selden, 401).

466. Selden assigned no mean limits to this pretended sovereignty. "Without question," he says, "it is true, according to the collective testimonies before alleged, that the very shores or ports of the neighbouring princes beyond sea are bounds of the sea-territory of the British Empire to the southward and eastward; but that in the open and vast ocean of the north and west, they are to be placed at the utmost extent of those most spacious seas, which are possessed by the English, Scots, and Irish" (Selden, 459).

467. He asserts the acknowledgment of this authority, and as independent of the English possessions on the coast of France, Normandy, and Aquitaine (p. 411) by the Genevese, Catalonians, Spaniards, Germans, Zelanders, Hol-

landers, Frieslanders, Danes, and Norwegians, before commissioners appointed by England and France after the treaty of peace between Edward I. and Philip the Fair, on their complaining of grievances inflicted during the preceding commercial truce by the French Admiral, who was alleged to have been guilty of usurpation in assuming a dominion on the sea (pp. 403-407).

468. The Venetians at this time (1202) were greatly increasing the dimensions of their vessels, perhaps in imitation of the Saracenic type, which was adopted by the Barcelonese in enlarging the scale of their ships. In 1270 the 'Santa Maria,' the largest of the Venetian fleet, was about 125 feet in length, and carried 110 seamen. In 1315-1331 the 'Sent Climent,' fitted out by merchants of Barcelona, had three decks, and carried from 400 to 500 men. In 1317, so much superior in size were the Mediterranean galleys, that Edward II. hired 5 from the Genoese, armed, manned, and victualled, to aid him in his Scottish war.

469. During those piratical times it was almost a necessary precaution for merchantmen to sail in fleets. In the reign of Edward III. this precaution was enforced by royal decree, and the first instance of convoy is recorded; for his own two galleys were appointed (1338) to guard the ships conveying provisions to his subjects in Scotland, and to cruise against the Scots and their allies.

470. Edward III. in the same year raised a question of neutral rights; he requested the King of Castile to prohibit commerce between his subjects and the Flemings, with whom England was at war. The Spaniard maintained the right of trading with the enemy, in which Edward found it expedient to acquiesce, and to reduce his application to the withholding of military aid. He could not obtain so much as this from the Genoese. They had become a maritime condottieri, like the Swiss, permitting their subjects to sell and hire the service of their ships and their swords; they, notwithstanding his adjurations, permitted 30 galleys to

be fitted out at Genoa and 20 at Monaco, to serve against the English king. In 1340, the Genoese and Spaniards furnished maritime assistance to the King of France; but Edward proved victorious and won the first regular sea-fight which the English are entitled to record. With 260 vessels he defeated, with prodigious slaughter and capture, 400 in the service of the King of France, including the larger vessels of the Spaniards and the Genoese. In 1346, he besieged Calais by land and sea. We have already contrasted his "huge fleet" with the vessels of the Grecian navy engaged in the siege of Troy.

471. Fortune awhile forsook the British flag. The Castilian cannon, the first employed by Christian nations in maritime warfare, and their vastly larger ships, after a two days' desultory battle (1372) completely defeated the English fleet.

472. The King, with the aid of a large taxation, fitted out "properly for war" 2 ships, 2 barges, and 2 ballingers, to cruise upon the coast. But, notwithstanding this mighty expedition and the achievements of Mr. John Philpot, and notwithstanding the capture of, among others, a Spanish vessel with a cargo worth 7000 marks, by the buccaneers of Newcastle and Hull, 4 French galleys (1379) insulted the river and the coast, burnt a part of Gravesend, and carried away prisoners and abundant spoil. It is the business of corsairs to plunder, not unnecessarily to fight the foe.

473. In 1415 Henry V. of England had collected a fleet of 1500 vessels for the invasion of France, among which several probably royal ships were distinguished as belonging to the Tower. In 1417 he had five ships built, three of them at Southampton, in imitation of the dromons of the Castilians and Genoese engaged in the service of the King of France. These, the largest which had yet appeared in the British navy, on account, perhaps, of the holiness and royalty of the expedition, were distinguished by the names of the 'Trinity,' 'Grâce de Dieu,' and 'Holy Ghost,' the



'King's Hall' and the 'King's Chamber.' The 'Hall' and 'Chamber' were very sumptuously adorned; the 'Chamber' displayed a sail of purple silk, embroidered with the arms of England and of the intended-to-be-conquered France.

474. One Taverner, of Hull, had (1449) built a ship so large that the delighted King conferred on her exemption from the staple dues, and the name 'Carrack Grâce-Dieu,' and the privilege of trading direct to the Italian States. At this time also, Canyngs, a Bristol merchant, possessed three ships, one of 400, another of 500, and the other of 900 tons.

475. Some merchants of the north of Spain in 1468 sent in a bill for the value of vessels and cargoes, alleged to have been piratically taken by ships of Sandwich, Dartmouth, Plymouth, and Fowey, *i.e.* for seven ships from 40 to 120 tons each and their cargoes. The ships were estimated in sums amounting to about £850, and the cargoes to about £4000.

476. In 1471 Lübeck, Rostock, Wismar, Stralsund, Dantzik, Königsberg, Riga, and Revel, and all the other Hanse towns of Germany, Prussia, and Livonia, entered into a convention, by which Bruges was established as the sole staple of their goods, and ships well armed were stationed at Hamburg and Sluys for the suppression of piracy and the accommodation of trade.

477. In 1481 Edward IV. of England had six ships designated royal, and five more, to which he appointed commanders. In 1489 the Parliament prohibited import or export in any but English bottoms, to improve, as it was said, this magnificent navy,—that is, by providing vessels which might be pressed into the service when required. By this time the English had extended their voyages to the Italian seaports; but their most adventurous exploits were to Iceland, now first sanctioned by the Danish king.

478. The Scotch royal navy was (1488) a mighty pair,—the 'Flower' and the 'Yellow Carvel,'—armed with guns, crossbows, lime-pots, fireballs, and two-handed swords.

479. But Henry VII., to eclipse all former kings, built a mighty ship, which cost full £14,000, and called her the 'Great Harry.' All else we know of her is that she was burnt.

480. VOYAGES.—The rovers and the traders of the north of Europe were alike intent on their immediate gain. Where plunder could be obtained, and in neighbouring places where goods could be bought or sold, the rover and the merchant were found. The princes thought not of the sea, except as the way to conquest or for the little commercial speculations in which they sometimes engaged. Neither prince nor merchant dreamt of regions far beyond the Western Ocean, nor, except, perhaps, Alfred and Athelstane, had one of them read, or could one of them read, of the nations beyond the Stormy Cape.

481. The few voyages involving discovery which were made were the results of accident rather than design. Of those we will take a very cursory view.

482. In a translation by the royal Alfred, we have an account of a voyage by Valfstan, a Dane, along the southern coasts of the Baltic, and by Othere, a Norwegian, beyond the North Cape.

483. Before the reign of Harald Haarfager (861), one Naddod, a Norwegian, had discovered Iceland. Thither driven by a merciless persecution, many of the most intelligent and adventurous of the Norwegians retired and founded a colony, distinguished for good government, intelligence, and a literary taste.

484. From Iceland the venturous mariners undoubtedly visited Greenland, and (1000) Biorn with his companions proceeded along the coast of America to a region where the soil was fertile and grapes grew wild. Here an Icelandic colony settled, and called their country Winland, and maintained itself at least above 120 years; for in 1121 a bishop proceeded thither from Iceland to introduce the Christian faith. There is a story that some Orkney fisher-

men, and with them Zeno, who alone returned to tell the tale, were driven (1360) by stress of weather to an island in the Western Ocean called by him Estotiland, where the people raised corn, drank ale, and practised such ordinary handicrafts as Zeno understood, and without the knowledge of the compass, which he first introduced among them, traded to Greenland and the American mainland. They who believe the story, may believe that this was the Icelandic colony of Winland, and that Zeno, appointed admiral of the King of Estotiland's twelve ships, was wrecked on the American shore among cannibals, from whom the Orkney men alone escaped; and that he for thirteen years wandered among various tribes, and into the south-west, where the people, in a mild climate, had cities and temples, and abundance of silver and gold.

485. There is a mythical tradition that Madoc, Prince of Wales (1171), found his way to America, performed some prodigies and founded a settlement there, and without chart or compass found his way back again to Wales, told his romantic tale, and set forth again with more Cumbrian emigrants to the newly-discovered land.

486. The Venetians assert that they are entitled to the honour of having first discovered America, and that not by accident, but by an expedition sent forth on a scientific voyage in search of lands across the waters of the Western Sea.

♦ 487. The moderns, however, have sought in vain for the Winland settlement, the civilization of Estotiland, and the kingdom of the Prince of Wales.

488. The first discovery from the English coasts is a romantic tale, better accredited, however, than many a story implicitly believed. Anna, the beloved of Machin, had been coerced to a nobler, or rather to a richer match. Love broke the bonds of matrimony. They fled from Bristol and the tyrannic shore. For thirteen days and thirteen nights the adventurous bark was driven in thunder, lightning, and

hurricane, beyond the realms of calculation and the regions of hope. The tempest subsided; the pall which hung over the beautiful island was lifted—Madeira stood revealed. The lovers landed on the delightful plain (about 1350), the domain of flowers, of forests, and melodious birds; they landed but to pine away. Their companions fled from the solitude to be enslaved by the Moor. The Portuguese had heard the melancholy tale, penetrated the superstitious gloom, and raised a monument to ill-fated love.

489. The Spaniards and the French also say that they had heard the tale, and that their adventurous mariners went forth in search of the mysterious isle; that they found not it, but that they discovered the Canaries in their search (in 1395); and the French, moreover, say, that Jean de Bethencourt, of Dieppe, conquered those islands in 1402. The French also claim the priority of discovery of Guinea in 1346, and the establishment of a settlement and a fort at Mina, on the Gold Coast, which, however, had vanished before the Portuguese arrived.

490. It was not by the bold navigators of Britain, or the hardy voyagers of the South, by the Iclander, the Fleming, the Dane, the Spaniard, or the Gaul, but through the science attained by the Portuguese and the nautical skill of the sons of Genoa and Venice that the stormy limits of Africa and the regions of India were to be first explored, and the fabulous regions far, far beyond remotest Thule were to be sought and found.

491. At length, among the princes of Europe one arose, Henry, son of John, King of Portugal, created Duke of Viseo in reward for the part he bore in the conquest of Ceuta from the Moors (1409 or 1415). Appointed governor of that fortress, his enlarged mind availed itself of the knowledge which he found among the followers of the Crescent. After his retirement from that office, this first and greatest patron of discovery (1415–1418) founded a school of navigation and science, erected an observatory,

and established a naval arsenal at Sagres, on the south side of Cape St. Vincent, overlooking the Atlantic Ocean. There he collected what could be gathered from ancient information, from the travels of the Venetians, the Arabians, and the Moors, and from the slender discoveries which the Northern nations had made.

492. The science of Greece and Egypt had established the Pythagorean (B.C. 539-510) system, and ascertained that the earth was a globe; that it revolved with the other planets round the sun; that the planets were habitable; that there was a temperate to the south as well as on the north of the torrid zone; and that there might be antipodes to the people of Greece.

493. Eratosthenes, librarian of Ptolemy Euergetes at Alexandria, the father of chronology, had (B.C. 240) measured the distance between the tropics, and found it equal to eleven eighty-third parts of the circumference of the circle, which nearly agrees with that assigned by gravitation as its true value: he observed the obliquity of the ecliptic to be  $23^{\circ} 51' 20''$ , and calculated the equatorial circumference of the earth to be about 24,900 geographical miles, and deduced that the vast extent of the Atlantic Ocean was the only obstacle to navigation from Spain to India, by going west. He followed Pytheas in describing the British Isles.

494. Hipparchus (B.C. 158) had invented the astrolabe, and employed it in observing the stars. He also found that an interval of 94 days and 12 hours elapsed between the vernal equinox and the summer solstice, while only 92 days 12 hours were included between the summer solstice and the autumnal equinox; and from these two facts deduced the eccentricity of the solar orbit and the place of the apogee. He also derived the analogous elements of the lunar orbit from three observed eclipses of the moon. And he ascertained that the year consisted of 365 days, 5 hours, 55 minutes, and 12 seconds. His astrolabe was constructed

so as to determine the position of a celestial body by means of longitude and latitude.

495. Ptolemy, who invented the quadrant, gives a description of the astrolabe, and (138) in addition to his own astronomical and geographical observations preserves the observations of many others.

496. We have noticed these few among the geographical and astronomical observations of these illustrious men to indicate the knowledge which existed in ancient times.

497. But the triumph of a new religion had been established, a religion which endured no opinions except its own. The last faint voice of the Grecian and Alexandrian schools had been silenced, and the efforts of the inconsistent Julian to rescue science and philosophy from the persecution of the priesthood had proved (363) as unsuccessful as his Persian war. The provinces of the Empire had engaged in the discussion of repugnant doctrines and relentless creeds, the history of which is written in blood, but could not and cannot be understood. Such time and talent as were not dedicated to the malignant conflicts of bigots were employed in the ferocious wars which temporal ambition aroused.

498. The clouds of darkness which had been gathering gloomily overspread Europe. Industry, commerce, and their attendant affluence disappeared. The remaining arts were those of the armourer and the workers in jewels and ornaments, in miserable imitation of the splendour which had passed away.

499. The legends of monks and the disputations and fabrications of priests usurped the seats and obliterated the writings of philosophy and taste. Astronomy, geography, and mathematics, were banished; the Pythagorean and Ptolemean systems were forgotten; the earth and the seas had become to men's minds a plane, surrounded by a mythical fence; and the sky and the heavens were laid out in a canopy above.

500. Century after century of accumulating darkness

rolled along. The Prophet of Mecca is in arms (629) against the Emperor of degenerate Rome, but it is to establish another proselytizing creed. Islam for awhile deepened the darkness which Christianity had spread.

501. But light has shone upon the Mohammedan realms; Almansor is (764) Caliph in Bagdad, and in Cordova Abderrahman holds his court, and there are schools of science and learning in Bokhara and in Samarcand; there the astronomer, the geographer, the mathematician, the chemist, the physician, the poet, the writer of fables, the teller of tales, the teacher of languages, the instructor in politics, the traveller and the merchant, without question of nation or question of creed, exile from Christendom or from Cambalu, finds hospitality and the society which he loves. There the banished learning and science of Greece have at length found a splendid retreat.

502. In Bagdad reigned the illustrious Haroun al Raschid (786-808), who conferred the honour of his friendship on Charlemagne, and encouraged the little commerce which the Christian states of Europe could afford; and the caliphs of Cordova fostered the industry and arts of Spain.

503. Under the auspices of Almamun two mensurations of a degree were made (813-833), one on the plain of Sinaar and the other on that of Caffa. Under his auspices also were translated all the literary productions of Greece and Egypt which had not been already translated under the directions of his illustrious predecessors. His court was a school of science, and the arena of wit, elegance, and taste. "The Arabian astronomers introduced the use of larger and better instruments than those of the Greeks, and took greater precaution to secure the accuracy of their results. The astrolabe, as used by them, was in some instances a complicated instrument; it carried circles representing the equator, the ecliptic, and other principal circles of the celestial sphere. In this form it acquired the appellation of the armillary sphere."

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504. The kings, the princes, the barons, and the knights are buckling on their mail. The rabble of Christendom are (1096) preparing for a wild exploit. A mad priest has summoned them, and they are swarming they know not where, like locusts to perish as they devour the land. In (1096-1200) Syria and Palestine a hundred fights are fought. The jerreeds and scimetars of the Saracens are glittering defiance to the Templars, the Hospitallers, and the serried lances of Austria, England, and Gaul. The contest was wanton, but it was the first acquaintance of the rude warriors of the West with Oriental magnificence and taste. The brave encountered the brave, and learnt courtesy and mutual respect. The Northman, the German, and the Gaul have seen curiosities, have heard strange tales of foreign climes and things before unknown.

505. The people of the remotest East were far more advanced in civilization than those of the Atlantic shores. They had, in millenniums which have never been counted, and of which superstition prohibits the computation, acquired arts, and made a progress in sciences and inventions of which the Christians had never heard. Among others, they possessed the art of printing, and they were acquainted with gunpowder, and with the magnetic needle, as we have already observed, and with a variety of other arts which have been claimed as inventions in the West.

506. It was the nature of inland commerce to travel stage by stage through the nations, by relays of purchasers as well as of conveyances. They who received them at Acre or Antioch, at Cairo or Caffa, knew little of those who had packed the commodities in Cathay. Stories had found their way with the caravans, magnified, distorted, half told, to the coasts of Syria, and some of them had travelled to Spain. There they were imperfectly learnt by pilgrims and Crusaders, who, still more inaccurately, recounted them at home. A thirst for information was excited, though little knowledge was as yet acquired.



507. The earliest traveller who brought any news directly from the East was Benjamin of Tudela in Navarre, a Jew, who wandered among the people of his persuasion in Europe, in Syria, Persia, and so far as Samarcand and the borders of Thibet and India, and returned through Ethiopia and Egypt. The information which he diffused, though now deemed scanty, exceeded all previously possessed by Western nations, of the remoter countries into which he had roved.

508. It is not within our province to speak of Avicenna, Averroes, and the other illustrious philosophers who adorned the Saracenic states, who restored and augmented the knowledge of the Egyptians and Greeks. It is sufficient to refer to a few of those whose writings contributed to the republication and extension of geography and the means of navigation, and contributed to the discovery of America, and the passage to the East.

509. In the reign of Almansor (753-774), Ali-Ibn-Zeid translated from the Pehlwi into Arabic the astronomical tables called Zig Shehriar, which are supposed to be lost, but of which extracts were preserved. Other astronomical works were translated from the ancient Persian, under the auspices of that celebrated prince. Ibn Haukal had written his geography, in which, although his sketch of Africa is short, he seems to indicate that the western and southern coasts of Africa were surrounded by sea. Quitting Bagdad in 942, he travelled through many countries, from India to the Atlantic coast, and his works contain valuable observations on the productions, commerce, and manners of the nations among which he roved. El Bekri (1067), son of the Prince of Huelva and Vizier at Cordova, wrote his book of Roads and Realms, and a Dictionary of Geography, which contained a description of parts of Africa and Spain.

510. Edrissi, who had been expelled from his dominions in the south of Egypt, had studied at Cordova, and taken up his residence in Sicily, under the patronage of Roger II., the most intelligent of the Christian princes, wrote in 1153

his Geographical Recreations,—“the amusement of one desirous of knowing all the countries of the world,”—framed a map,—not very accurate in longitude and latitude, it is true,—and constructed a silver globe, on which he delineated the then known divisions of the earth. The information which his works contain is considerable, especially as to the eastern parts of Africa. Almost contemporary with him, Essachali, a Mohammedan of Sicily, whom Roger had in vain invited to reside in his court, produced his work on ancient and modern geography, which that prince preferred to Ptolemy, because it described the whole of the world, of which Ptolemy had described only a part.

511. Among the importations from the East, had already arrived vague notices of the mariner's compass. The first notice of it, which we find in the annals of European invention, is (1200–1220) in the pages of Hugues de Bercy. We cite from Macpherson. “When the mariners have touched a needle with the loadstone, and fixed it on a bit of straw, they lay it in the water, and the straw keeps it afloat. Then the point infallibly turns towards the polar star, and thereby the mariner is directed in his course.” Another hundred years elapsed before the needle was placed, in Europe, on a card. From the notice of it by Jacques de Vitry, about the same date, it was manifestly derived from the East.

512. Now (1218) arose the mighty Tatar empire of Zenghis, his sons and his grandson, the magnificent Kublai Khan,—the widest that history ever beheld, deluging Cathay and the rest of China with blood, sweeping over Karism, the sumptuous Samarcand, the enlightened Bokhara and the Bactrian realms, hurling down the Caliphat and the Persian's throne, and rolling the Russians, the Poles, the Hungarians, and the Crusaders in the dust. From Karacorum the edict went forth over dominions four times as extensive as those of imperial Rome, Alexander, or the successors of the Arabian Chief; dominions subdued in years almost as

few as the centuries occupied in spreading the domination of Rome. The Crescent and the Cross vanished before the irresistible invasion. If the armies were as barbarous and as ruthless, they glittered as brilliantly as the armies of Islam or of Christendom. It was the last inundation from the nursery of nations, the last outpouring from the East. At length the tide was stayed. Desolation marched before it, but commerce, civilization, and enlightenment followed in the rear.

513. It secured safe passage for the caravans, and Campion in Tangut became a resting-place and rich emporium, and Crim and Caffa became prosperous marts for the silks, the linen, the cottons, the rich embroideries, the filigree, the porcelain, and other productions of India and Cathay, and for the amber, the gold and silver of the West. From the ranks of Zenghis was first heard the thunder of war; in his wake came fully developed the mariner's compass—the guiding angel on the ocean—and the printing-press, the civilizer of mankind. It was then that a hundred inventions with a hundred conflicting claims to each sprang up. Western ignorance would acknowledge no information from the East. The trembling priesthood derided the Eastern savages, but the gorgeous savages laughed at the ignorance and tinsel finery of the West.

514. Carpini (1247) and Rubriquis (1255), barefooted envoys of the Pope and the King of France, had brought home narratives of wonder and falsehood and self-adulation, and some little knowledge, from the courts of the satraps of the Great Khan. But the Venetian merchants had sought the East with wiser views; and although Western superstition had been entertained with ridicule, Western intellect was appreciated by the princes of Kublai Khan; and the uncles of Marco Polo, who had attained high honours and affluence, were (1269) sent by that emperor as ambassadors to the Court of Rome. Nor is it to be supposed that they were the only travellers who had gained information in the East.

515. So early as 1263, the compass was the emblem of an order of knighthood among the Norwegians, who had introduced it into a box, although probably without a card. And about this time (1269), half a century before the pretended discovery of the compass at Amalfi, the attraction, repulsion, and polarity of the magnet, and the art of communicating these properties to iron, were scientifically described by Peter Adziger, who described also the variation of the magnetic needle, and the construction of the azimuth compass. The use of this invaluable instrument had become general before 1344.

516. In 1271, Marco Polo accompanied his uncles on their return to Cambalu, and, after enjoying the government of one of the greatest cities of China, and acquiring information and wealth, returned by way of India, the guardian of the emperor's daughter to her husband, an Indian king, with a fleet of fourteen vessels, each carrying four masts and nine sails; they arrived (1295) in their native city, with treasures of Oriental knowledge too great to be believed by the ignorance and jealousy which deprived them of fortune, and consigned them to a gaol. From that gaol emanated the invaluable narrative of this accomplished man.

517. The information thus imparted was generally diffused. The nature of gunpowder was undoubtedly known to Roger Bacon before 1292, and this terrible implement was in use before the time of its alleged invention (1330) by Barthold Schwartz. It had been employed in some sort of guns by the English against the Scots on the Wear in 1327. The Moorish King of Granada shot balls of iron from cannon in 1331, and in 1339 the Scots battered the walls of Stirling Castle with cannon of some description. These instruments, however, are said to have been at times so mismanaged as to cause more damage to those who fired them than to the foe.

518. The manifest utility of the mariner's compass introduced it, though slowly, into common use. The purposes of

war rendered gunpowder and its associate missiles acceptable to belligerent princes; but the art of printing was neither so easily introduced nor so readily welcomed. The products of the Chinese press in no way resembled the European characters; the process was not easy of explanation; the machinery was too ponderous to be brought from a region so remote. A considerable interval elapsed before the conflicting claims to an invention, which neither of the claimants invented, arose. Moveable types were, but printing was not, a European invention. In the first half of the fifteenth century there were several competitors. Their earlier productions, however, were of no great utility to science.

519. In the latter part of the thirteenth century, another Arabian, Ibn Said, wrote a book on geography, describing, among others, the black nations on the shores of the Indian Ocean. Abulfeda, Prince of Hamah, in Syria, in 1321, wrote a book on geography, chiefly confined to Karism and Mawaralnahr, regions beyond the Oxus; but he describes the sea as surrounding Europe, Africa and Asia, and, commencing at Centa, describes the coast of Africa as trending southward beyond the equator, then bending to the east, then proceeding southward, and then again turning eastward, then taking a north-easterly course to its junction with the sea of India.

520. A little after the middle of the fourteenth century, Ibn Khaldun, born at Tunis, and holding office under the sovereign of Fez, wrote on geography, but is said to have derived his information mainly from Ibn Said. There were other geographers and travellers among the Saracens, but of all the most celebrated is Batuta (Abu-Abdallah-Mohammed-Ebn), whose travels have been translated by Lee. He is described by Burckhardt as "perhaps the greatest land-traveller who ever wrote." Born at Tangier, he left Tandja about 1325, and wandered over more than half the then known world. He travelled over all the northern coasts of

Africa, Egypt, Syria, Mesopotamia, Persia, Arabia, further than any preceding traveller, to a very great distance, down the eastern coast of Africa towards the south, to several islands on that coast, to the islands of the Persian Gulf, to the Black Sea, from Astracan to Khiva, to Kipchak, to Bokhara, Samarcand, Balkh, Herat, Gaznee, and Cabul, to the Punjab, to Delhi, and far eastward; thence to the Malabar coast down to Calicut, to the Maldiv Islands, to China, and, returning by Java, Muscat, and Yemen, went to Spain, recrossed to Morocco, thence traversed the desert to the Soudan, travelled to Dongola, and, after twenty-five years' absence, returned.

521. At his academy at Sagres, Prince Henry, with the intelligent men whom he had gathered from all countries around him, culled information from the sources we have indicated, and depicted the results in maps. They occupied themselves in the study of the astrolabe, the mariner's compass, and such other nautical instruments and inventions as the times could afford. They were also engaged in the improvement of the vessels, with which, from time to time, under his auspices, discoveries were made on and to the westward of the African coasts. Thence and from Lisbon, under his directions, went forth expedition after expedition, with the confident expectation of finding a passage round the Cape to the wealthy countries of the East.

522. So early as 1415 he dispatched two vessels along the African coast. They proceeded only so far as Cape Bojador. In 1418, another expedition, fitted out under his eye, was driven by tempest from the coast, and discovered Puerto Santo, the smallest of the Madeira group. Hence, led by the tale of Machin, the Portuguese penetrated (1420) the superstitious gloom which overshadowed the principal isle. Step by step, under the solicitous care of this illustrious prince, by expedition after expedition, year by year, under commanders native and from abroad, the Canaries, the Azores, and the coasts of Africa beyond the line of the

equator were discovered and partially explored ; when, in 1463 (or 1473, for there is a question as to the date), the patron of discovery and navigation died.

523. For awhile the enterprise of Portugal slept, discovery by her vessels proceeded slowly—yet it did proceed ; and step by step their expeditions crept towards the stormy Cape. John II. awakened the dormant spirit ; and after the discovery of Congo (1484), he dispatched Covillan and others to seek by land, and Bartholomew Diaz by sea, information as to the means of reaching the opulent regions of India by sailing round the African shore, and also of finding the wealthy domains of Prester John. Before Covillan had finished, or sent back any report of his journey, or on the accuracy of the map with which he had been entrusted, Diaz, in 1487, passed and returned by the Cape designated of Tempests, from its storms, but, from the success of the expedition, the Cape of Good Hope.

524. In the meantime, Martin Behem, who is said, but on no satisfactory authority, to have discovered Brazil in 1484, after consultation with Roderigo and Joseph, a Jew, first applied the astrolabe to the purposes of navigation, to enable the mariner to ascertain his distance from the equator by the altitude of the sun, and composed tables of declination for ascertaining the latitude.

525. The greatest of the Genoese, Christopher Columbus, already an experienced mariner, and his brother John, left their native country for Lisbon in 1470, and for the most part resided there. He for some time dwelt at Porto Santo, and took part in several of the Portuguese voyages to the African coast. The chief occupation of the brothers was in earning a humble subsistence by constructing maps. With the nautical knowledge which they brought from Italy, and had subsequently acquired, and the improvements in the mariner's compass and the astrolabe and other instruments with which the disciples of Prince Henry had become familiar, they were well prepared to venture on the sea. By

means of the industry and researches of that intelligent prince, a vast fund of information had been collected, to which they in their business pursuits would necessarily resort. The world had at length become to the minds of the Italian and Portuguese mariners a measurable globe. They had before them the spheres and calculations of the ancients and of the Arabians, not greatly deviating from the truth. Eratosthenes, Seneca, Aristotle, and Pliny had believed that western regions could be reached by stretching across the ocean from Cadiz. Alfraganus the Arabian had diminished the distance by under-estimating the degrees. Wood of strange kinds and carvings had been picked up near the Azores and at sea, swept from the unknown regions by the Gulf-stream, then alike unknown. It required only hardihood to venture on the long, long voyage. There is land far, far beyond the Azores. The question is, how far? There are silks, and spices, and diamonds, and rubies, and pearls, and rich manufactures, and luxurious fruits. There is a feeble people, and abundance of silver and gold.

526. That the King of Portugal should not have accepted the gorgeous temptation may be understood. His ships were preparing to reach it by a shorter and surer course; the maps for his voyage were complete; the route was already traced. He knew not of other treasures between him and the contemplated prize. The English monarch declined it. He and his court knew nothing, and were incapable of learning anything, of geography beyond the immeasurable western ocean. England possessed little nautical enterprise, except for levying tribute on the narrow seas, and Henry was very careful of his coin.

527. A contract at last is signed (April 17, 1492). Columbus shall be Viceroy and General and Admiral of all the lands and seas he can subdue, and he shall have one-tenth of all the pearls and precious stones, of all the spices and merchandises, and silver and gold which he may in any manner acquire; the liberal Isabella shall have the rest.



528. The great Admiral is embarked in three little shallops, with a tiny band, on the unknown, the unbounded sea, dispatched by the royal bigots to christianize the heathen with desolation in the search of gold.

529. Anahuac (Mexico) and Tavantinsuyu (Peru) tremble. It is over the eastern ocean, their ancient prophecies proclaimed, that the destroyers shall come, mounted on strange animals, and lightning across the land.

530. At the command of the Aztec priests, the altars are reeking with the blood of hundreds to expiate the sins of the nation, and to avert the doom; but the land shall be heaped with carnage, and shall flow with the blood of hundreds of thousands at the mandate of the missionaries from Christian crowns.

531. A new world is discovered (San Salvador, October 12, 1492), the fabled Atalantis is won. It shall bear another's name, proud Admiral; it shall ever be blended with thine.

532. Such is the insolence of priestcraft, the confidence of avarice, and the submission of superstition, that a pontiff presumed to divide all the Gentile nations of the world between Portugal and Spain. The humblest individual of those nations had as valid a right to divide his triple crown. But Portugal and Spain were determined on plunder, and deemed their atrocities sanctified by the papal bull. This division was by a document, bearing date 2 and 3 May, 1493, only two months after Columbus returned from his first voyage, and thereby Alexander VI. professed, in consideration of propagating the Christian faith, of course by the usual means, to bestow upon Spain all lands not occupied by Christians, which Spanish navigators should discover to the west, and on the Portuguese all which their navigators should discover to the east, of a line drawn 100 leagues west of the Azores, from pole to pole. This marvellous title-deed, conceived in ignorance of geography as well as of rights, was afterwards reformed.

533. On the 8th of July, 1497, Vasco de Gama sailed

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forth with three ships and a caravel, of the respective burdens of 120, 100, 200, and 50 tons, destined to sail round the Cape to the regions of Ind, furnished with the chart which had been corrected, and with letters from the king to the princes of India, and the fabulous Prester John; and steering through storm and tempest, on the 20th of November doubled the terrible Cape. He followed the south-eastern coast of Africa to Melinda, and thence bore boldly across the Indian Ocean, and reached Calicut, on the coast of Malabar. The discovery of India was accomplished. Fleet after fleet pursued the route. Portugal established a mighty empire in the Indian seas.

534. England was among the most tardy in the field of discovery. Her maritime energies had been diverted, her industry disturbed and repressed by the desolation of civil war. Henry had declined the advances of Columbus; but after the news of the discovery of a new world, glittering with diamonds and paved with gold, defended by a feeble population, he was not reluctant to participate in any treasures which his subjects or others might at their own cost and hazard acquire. The English mariners were not erudite in geography; they had no notion of the way to the treasures of which they incessantly heard. But in Bristol dwelt John Cabot, a Venetian merchant, who knew something of geography, and was willing to encounter the risk, if assured of a fair share of the profit which he might obtain. Accordingly he laid his views before the king, and the king deemed them worthy of royal approbation; they were so proper for the subjects whom the adventure would bring under his benign rule, and so illustrative of the king, the adventurer, and the times, that we cite from 12 Rym. Fœd. 595, at length (1496).

*“Pro Johanne Caboto et filiis suis super terra incognita investiganda.*

*“Rex omnibus ad quos, etc., salutem.*

*“Notum sit et manifestum, quod dedimus et concessimus,*

pro nobis et hæredibus nostris, dilectis nobis Johanni Caboto, civi Venetiarum, ac Lodovico, Sebastiano et Sancto, filiis dicti Johannis, et eorum ac cujuslibet eorum hæredibus et deputatis, plenam ac liberam auctoritatem, facultatem et potestatem navigandi ad omnes partes, regiones et sinus maris orientalis, occidentalis, et septentrionalis, sub banneris vexillis et insigniis nostris, cum quinque navibus sive navigiis, cujuscunque portituræ et qualitatis existant et cum tot et tantis nautis et hominibus, quot et quantis in dictis navibus secum ducere voluerint, suis et eorum propriis sumptibus et expensis :

“Ad inveniendum, discooperiendum, et investigandum quascunque insulas, patrias regiones, sive provincias gentilium et infidelium in quacunque parte mundi positas, quæ Christianis omnibus ante hæc tempora fuerunt incognitæ.

“Concessimus etiam iisdem et eorum cuilibet, eorumque et cujuslibet eorum hæredibus et deputatis, ac licentiam dedimus assigendi predictas banneras nostras et insignia in quacunque villa, oppido, castro, insula seu terra firma a se noviter inventis.

“Et quod prænominati Johannes et filii ejusdem, seu hæredes et eorum deputati quibuscunque hujusmodi villas, castra, oppida et insulas a se inventas, quæ subjugari, occupari et possideri possint, subjugare, occupare et possidere valeant, tanquam vasalli nostri et gubernatores, locatenentes et deputati eorundem, dominium, titulum, et jurisdictionem eorundem, villarum, castrorum, oppidorum, insularum ac terræ firmæ sic inventarum, nobis acquirendo.

“Ita tamen ut ex omnibus fructibus, proficuis, emolumentis, commodis, lucris et obventionibus, ex hujusmodi navigatione provenientibus, præfati Johannes et filii ac hæredes et eorum deputati teneantur et sint obligati nobis, pro omni viagio suo, totiens quotiens ad portum nostrum Bristollicum applicuerint, ad quem omnino applicare teneantur et sint stricti, deductis omnibus sumptibus et impensis necessariis

per eosdem factis, quintam partem totius capitalis lucri sui facti sive in mercibus sive in pecuniis persolvere.

“Dantes nos et concedentes eisdem suisque hæredibus et deputatis ut ab omni solutione custumarum omnium et singulorum bonorum ac mercium, quas secum reportarint ab illis locis sic noviter inventis, liberi sint et immunes.

“Et insuper dedimus et concessimus eisdem ac suis hæredibus et deputatis, quod terræ omnes firmæ, insulæ, villæ, oppida, castra, et loca quæcunque, a se inventa, quotquot ab eis inveniri contigerit, non possint ab aliis quibusvis nostris subditis frequentari seu visitari, absque licentia prædictorum Johannis et ejus filiorum suorumque deputatorum, sub pœna amissionis tam navium sive navigiorum quam bonorum omnium quorumcunque ad ea loca sic inventa navigare præsumantium.

“Volentes et strictissime mandantes omnibus et singulis nostris subditis, tam in terra quam in mare constitutis, ut præfato Johanni et ejus filiis ac deputatis bonam assistentiam faciant, et tam in armandis navibus seu navigiis, quam in provisione comæatûs et victualium pro sua pecunia emendorum, atque aliarum rerum sibi providendarum, pro dicta navigatione sumendarum, suos omnes favores et auxilia impartiantur.

“In cujus, etc.

“Teste rege apud Westmonasterium quinto die Martii.

“PER IPSUM REGEM.”

535. With this unquestionable right to take possession of what he could, Cabot and his son set forth across the Atlantic in the spring, and discovered St. John's and Newfoundland in the autumn of 1497. In the following year Sebastian started again from Bristol, in the confident expectation of finding India and Cathay, and for that purpose coasted America from Newfoundland to Florida; but he returned, and for awhile all English speculation in American adventures ceased. The gold had been talked about; the

British mariners reserved their prowess until some of it appeared. As pious Catholics, they were bound to respect the concession which their holy father had made in favour of Portugal and Spain; and they did to some extent abstain from infringing it until the faith of some of them was altered, and the galleons were more heavily freighted with silver and gold.

536. In 1500 Cabral set forth from Portugal to Calicut with the greatest armament which had sailed for the Indian coasts, thirteen vessels, adapted for war as well as commerce. In his way he discovered Brazil, and claimed that vast empire for his sovereign as part of the gift of the Pope. In the same year Vincente Yanez Pinzon discovered Cape St. Augustine, and probably with some regard to the pontifical donation, in search of dominions for his master the King of Spain, held his course northward and westward by the Amazon and the Orinoco to Hispaniola.

537. In 1501, Americus Vesputius, a Florentine in the service of Portugal, touched at St. Augustine, conferred his name on the vast regions of America, and skirted 600 leagues southward of its coasts.

538. In 1500 and the three following years, Portuguese expeditions attempted a passage by the north-west, towards the land of riches, and discovered the desolate regions of Labrador. Two of these expeditions perished in the attempt.

539. Juan Ponce discovered Florida, the land of flowers, and claimed it for the King of Spain.

540. As yet all the discoveries were on the Atlantic and in the Indian seas; a vast impenetrable continent lay between Europe and the desiderated regions of Cathay. In 1513 Vasco Nunez de Balboa, Governor of Darien, the first of Europeans, beheld the waves of the Pacific Ocean, which, as they told him, rolled upon a region abounding in gold—unhappy Peru.

541. But the barrier must be penetrated; rich and teem-

ing with treasure, still it lies in the way of richer and more flourishing realms. They have tried it midway, they have tried to pass it on the north, they have followed it from the icy regions all along the coast; there is no inlet, there is no strait: it must be penetrated. Magellan has found a narrow and a fearful passage in the extreme south. By the land of Fire he has gone through it. Magellan is in the Southern Sea (1519). That wide ocean he has traversed, he has visited its islands, and, steering westward, has passed the stormy Cape. But his companions shall tell the tale of his sufferings, and complete the first circumnavigation of the world.

542. Henry VIII. laid the first foundation of the British navy, and is the first of our sovereigns who had a fleet which could be properly called his own. It was of no great magnitude. Francis I. had about an equal military marine. In a skirmish between these potent fleets (1512), the largest ship of each, estimated at 1000 tons, the Frenchman crowded with 1600 men, was burnt. The English man-of-war was replaced by the towering, tottering, tawdry fabric, of perhaps still greater burden, armed with 122 little cannon and swivels, and baptized 'Henry Grace à Dieu.'

543. We have already observed upon the incapacity of the sovereigns of the western nations to repress the piratical habits of their subjects. They had few vessels of war which they could call their own; they were dependent for their belligerent means upon the levies on the maritime towns. The King of England could not rely on the readiness of the rovers, who have retained almost to the present day the name of Gallants of Fowey, to chastise the appropriating habits of the mariners of the Cinque Ports and Hull. The inferior judges of each kingdom were so thoroughly imbued with the sentiments of the people, that justice could not be obtained. The supposed calumny did not apply to any particular nation. Each, as in the family feuds of savage tribes, was impressed with the conviction that there was some outrage to be avenged. Of the British hero Drake, who is reported

to have lost his fortune (it is difficult to see how, as his ship escaped) in a piratical expedition of Hawkins (1562-1568) against the colonies of Spain, it was said "that the King of Spain's subjects had undone Mr. Drake, and therefore Mr. Drake was entitled to take the best satisfaction he could on the subjects of the King of Spain." Such were the notions which prevailed many years subsequent to the period of history with which we are now concerned. The only power approaching efficiency which the sovereigns possessed, was that of holding the ports from which ships issued responsible for the conduct of the crews, and requiring the owners and captains to enter into bonds for the conduct of their vessels upon the sea. That such bonds should be given were the conditions of several treaties, to which we have already referred. But as the lust for marine plunder, which had been excited to an uncontrollable extent by the discoveries of Portugal and Spain, led to expeditions to which it will be necessary to allude, it may not be improper to illustrate the condition in this respect of the western nations from an unquestionable source, the "*Tractatus Depredationis*" (12 Rym. Fœd. 629), between Francis I. and Henry VIII. (1518), two kings who had the semblance at least of a royal marine.

To put an end to suits relating to spoliations, as to which there was complaint of interminable delay, it was resolved that such suits should be disposed of by the judges at once, or referred to judges thereby appointed; and that any inferior judges refusing to send to them the proceedings within ten days after the requisition of either party, should forfeit thirty silver marks, and that if they proceeded in the cause without the consent of both parties, their judgment should be void.

And that, as well for disposing of future as existing causes, the admiral, vice-admiral, or their deputies, and the Master of the Rolls should be appointed judges in London for England; and the admiral, vice-admiral, or their deputies, and especially the President of the Court of Registry in Rouen,



for France. And that they should determine summarily within six months, if the parties required it, and without form, causes of maritime incursions, piracies, and depredations in which proceedings had been taken, and within a year at furthest new causes, or when little had been done.

It was provided that military aid should, if necessary, be afforded to enforce the judgments, and an appeal was given, on certain conditions, to the supreme council of the respective kings.

And as it might be difficult to seize the depredators, or to ascertain their abodes, proclamation was to be made by the crier, or trumpet, or other usual mode of giving notice, in the harbours or towns of their prince nearest to the place where the injury occurred, which, if repeated at any time after fifteen days, was to have the effect of a citation personally served.

And to prevent future piracies, it was agreed that the admiral or proper officer of every harbour in each kingdom should require sufficient security from the owners or officers of every native ship, according to her value and equipment, to be given before leaving port; that the owners, masters, mariners and sailors, and all on board, should keep the peace towards the subjects of the other prince, and abstain from committing any injury against them on the land, the rivers, the harbours, or the sea; and should not take on board any passengers, sailors, or soldiers until their names had been given to such admiral or deputy, who should inscribe them in a register. And that before leaving port all on board such vessel should swear that they would not in the course of the voyage do any injury to the lands or persons of the other king's subjects, by land, in the rivers, or on the sea; and also that in all cases of bringing in captures, booty, or spoil, they would bring two or three of the chief persons of the captured ship before the admiral or vice-admiral, or their deputies, to be examined as to the capture




or goods, and that they would not make, or suffer any division, transfer, change, or alienation of the plunder, spoil, or merchandise until they should have been presented for the examination of the officer of the port, who was to determine what was to be done. And that they should swear that on their return to port, or arrival in any harbour of the kingdom from which they sailed, they would immediately inform the officer of the port from which they departed, respecting any goods, spoil, booty, or merchandise. And it was provided that a record should be made of these securities and cautions, one to be retained in the port, and the other delivered to the officer of the ship; and that they should be allowed to depart from any port at which it was produced.

And it was stipulated that the officer of the port should not permit any portion of such merchandise to be transferred, changed, sold, or alienated.

And it was provided that the proper port-officer, guilty of neglect in omitting to require the security and oaths, should be personally liable for any injury which might be done by the ship, or any one in her.

And that proclamation should be made prohibiting merchants and others of any rank or condition, under penalty of imprisonment and confiscation of property, from purchasing, or taking by gift, transfer, or any other title or colour, and from holding, hiding, concealing, or receiving any merchandise or goods, or anything whatever taken upon the sea, before the admiral, vice-admiral, or their deputies had declared the booty and capture to be good and lawful spoil, and from procuring or permitting anything of the kind to be done.

The treaty makes provisions for enforcing the bonds, satisfaction for injuries, and restitution of plunder, and various provisions as to the mode of proceeding; and declares that the like course shall be applied to depredations committed on land.



544. About 1523 the French began to interest themselves in discovery of new lands, with the like appetite for conquest. Their first expeditions were however directed by foreign assistance. Verazzano, a Florentine, conducted them to Carolina or Georgia, and along the coast to Newfoundland. Within twelve years they had again visited Newfoundland and the mighty city of Hochelaga (near where now stands Montreal), consisting of full fifty wooden houses, roofed with bark; the enclosure in which it stood was surrounded with a palisade. The French king assumed possession, and created a Viceroy of Hochelaga, Canada, Newfoundland, and Labrador, and the viceroy erected and abandoned a fort.

545. The English had made one more voyage towards the north-west, under Sebastian, the son of John Cabot. His proposal was to sail by the Pole to the East, and return by the Straits of Magellan, loaded with precious stones, balms, silks, muslins, and gold. He sailed about 1526, and discovered Hudson's Bay, and explored the coast as far south as Virginia. With this, the English expeditions to the north-westward temporarily ceased.

546. The Spaniards in their New World extended their discoveries along the Pacific coast. It was surveyed by Ximenes and Ulloa (1539) to California, and by Alarcon (1542) to the Colorado, and soon afterwards by Cabrillo beyond Cape Mendocino, and by Viscanio to Columbia, and perhaps further north.

547. Spain, which had expelled the Moors and the Jews, the arts, sciences, and almost every trace of internal wealth, teemed with soldiers and adventurers avaricious of gold. The nobles, the peasants, and the artisans, crowded in thousands to the regions in which inexhaustible riches were to be found. It is not for us to narrate the romantic achievements of Cortez, or the desolating progress of Pizarro and his murdering band. Nor is it within our province to record the brilliant exploits of the Portuguese in establishing

their more commercial empire on the coasts of Africa, India, and Brazil.

548. In the middle of the sixteenth century, at length English merchants began to think again of finding a way to India and Cathay. Their vessels were not yet prepared for regular encounter with the galleons and carracks of Portugal and Spain; to force their way by the Cape of Good Hope, or to assail the settlements on the West Indian Islands and the Central American coasts. Merchants of London took counsel with Sebastian Cabot, who had returned from Spain, and held the office of Grand Pilot of England, with a salary of £60 a year, as to the practicability of approaching the Oriental realms by the north-east. Under his advice, the first English expedition set forth under Sir Hugh Willoughby,—three ships, described as of extraordinary strength, with keels covered with sheets of lead, then for the first time so applied, and furnished with provisions for eighteen months. This was the most peaceable squadron which had yet set forth; for instead of a warrant to discover and subdue, the commander bore (1553) letters from Edward VI. to the kings, princes, rulers, judges, and governors of the earth, promising not to trespass, soliciting free passage and hospitality, and engaging to confer similar benefits in return. They followed the course of Othere round the North Cape into the White Sea; and although the enterprise was unfortunate, and its immediate object failed, the commander visited the Muscovite court, and laid the foundation of that trade which led to the establishment of the Muscovy company in England. Frobisher and others in vain attempted to find their way in this direction to the East.

549. There had been for some time growing up a race of men, if possible, hardier, more daring, and certainly more adventurous, than even the ancient pirates of the North, called, by themselves, Gentlemen-privateers, because their expeditions were fitted out by merchants and other speculators, including themselves; by the French, Corsairs and Flibus-



tiers, from their habits of robbery; and by the Spaniards, the chief sufferers from their depredations, Buccaneers, because they subsisted chiefly on sun-dried flesh.


550. After several expeditions of a similar character, Hawkins (afterwards one of the bravest commanders of the British fleet), with six ships, of which the 'Judith' was commanded by the still more illustrious Drake, sailed (1567) to the coast of Guinea; and having seized upon Negroes enough to cram his vessels, steered towards the slave markets in the colonies of Spain, and having landed and burnt the Spanish town of Rio de la Hacha in his way, reached St. Juan de Ulloa, where, though much tempted to seize upon twelve galleons, worth £200,000, he abstained, lest he should offend the Queen, and was surprised at a Spanish squadron destroying, of course treacherously, four of his ships. His own vessel, the 'Minion,' however, with the 'Judith,' escaped, and thereby entitled the redoubtable captains to make unlimited reprisal on the cities, and ships, and cargoes of the subjects of the King of Spain.

551. Hawkins, Drake and Frobisher, and Cavendish, who was ravaging the Indian seas, and many another bold Englishman, were of the order of gentlemen-privateers. France was in confusion. The Netherlands were insurgent against the bigot who ruled over Naples, Portugal, and Spain, and in right of those dominions exhausted the treasures of so much of Brazil, Peru, and Mexico as had been subdued, and traded with and pillaged the coasts of Africa and the East. There was peace between Philip and the Queen of England; but her troops and her captains swelled and marshalled the forces of the rebels, and English rovers (among them Drake), in the second circumnavigation of the world, and in voyage after voyage, with royal ships and with corsairs, devastated his colonies, burnt his towns, captured his vessels of commerce, destroyed his men-of-war, and appropriated all his treasures which they could find upon the seas. He meditated reprisals, but called it peace.

552. The magnificent Armada is displayed (29th July; 1588) to the English coast. Tower after tower, galley after galley, in seven long miles of circuit, 130 huge vessels heave in sight. It is not a numerous, but it is a mighty expedition. It moves in unprecedented pomp. The Duke of Medina Sidonia is its admiral, of the greatest of the magnates of Spain. The Vicar-General of the Holy Inquisition is its high-priest, attended by 290 monks. Its decks are resounding with martial music, and trodden by 30,000 men; its sides bristle with 3165 cannon. Each great galeas with 300 rowers sweeps the wave. Their lofty sterns and prows are glowing and glittering with vermillion and gold. Their sails are expanded, their gorgeous standards and streamers are floating in the wind. The largest will carry 1200, the smallest 300 tons.

553. The invincible Armada approaches. Darkness closes on the scene. A thousand beacons are blazing along the English hills. Forth sail the royal ships of England. Their numbers are few. A noble is their admiral, but the Corsairs are their captains, the terrible sons of the sea. Forth speed the rovers of Plymouth; forth speed the gallants of Fowey, the cock-boats, the shallops, all the merchant craft; the nobles and the gentry are among the sailors, undisciplined volunteers. The eagles and the hawks are on the banquet; they have snuffed the carnage of Spain. They who have not already won them, this day shall win their spurs.

554. The wind freshens; on drifts before it the cumbrous cavalcade, jostling, crashing, crushing upon each other; the unwieldy vessels stumble along the sea, day after day, shattered, riddled, sunk, insulted, attacked, unable to attack. They expand their great line off Calais, waiting in vain for the ships of Farnese, in battle array. The wind is rising; in the darkness the waves are illumined, fire-ships are drifting upon them; crowding together in confusion, stranded, disabled, the unmanageable expedition is again driving before the wind, day after day pursued, battered, and persecuted along a dangerous coast. The provisions and



shot of the victors are expended ; but they, still menacing, pursue. The storm rolls down on the devoted Armada. Its fragments are strewn on the billows ; its brave soldiers lie rotting on the rocky realms of the Seakings and Yarls. Of 135 proud vessels, but 53 return to the seaports of Spain.

555. The United Provinces are free. They (1594-95) have sent forth their first expeditions in search of India and Cathay. Beyond the North Cape the passage is bound with impenetrable ice. But the Hollanders have resumed their ancient place upon the ocean.

556. The European fancy is enchanted with Elysian fields, and El Dorados in the South, and the West, and the East. The waters swarm with vessels of commerce, of discovery, and of the buccaneer ; the caravals of Portugal and the carraks of Spain are freighted with silks and spices, and loaded with the precious ores ; the frigates of England and the galleys of Holland rob the robber, and despoil the spoiler of his prey.

557. The ancient models, and those of the Middle Ages, are abandoned ; Europe is building more manageable ships. The Sovereign of the Seas is first of the British force. The ancient castles are abated ; she is fit to encounter the waves. Her length is 232 feet, her breadth 48, her height to the top of her lantern 76 ; on her three decks, her half-deck, her quarter-deck, her forecastle, and chase, she carries 128 culverins, demiculverins, and all manner of guns. At length navies grew up, and sovereigns became able to repress buccaneers.

558. The vessels of commerce replace the rovers, and the nations of Europe are visiting every sea. Britain, late in the career of discovery, was the fastest in the race. The greatest and best of discoverers was the British skipper Cook. The vast Atalantis is the seat of mighty nations. The teeming regions of India, and the broad islands of the Southern seas, are provinces of the British realm. The map of the world is unfolded ; our tale of discovery is told.

## RIGHTS AND LAWS OF NAVIGATION.

### CHAPTER I.

#### LAWS WHICH REGULATE THE WATERS.

WE have now to address ourselves to the rights and reciprocal duties of those who traverse the waters, the rights and duties of the mariner and his ship.

559. **IMPERSONATION OF THE SHIP.**—The commander and the crew, and those who are interested in her and her freight, and to some extent her cargo, may be impersonated in the ship.

“She walks the waters like a thing of life,  
And seems to dare the elements to strife.”—*Corsair*.

For the due consideration of her rights, and the laws by which she is bound, we must have regard, first, to the area on which she is sailing; and, secondly, to the nation to which she belongs. In the open sea she is a citizen of the world, in her national waters she is a subject of her own realm; but even on the open sea she cannot throw off her allegiance.

560. The ship, as we have said, is an impersonation. The individuals on board her are, in some respects, amenable for their conduct to the laws of their own nation,—as for treason, desertion, and other crimes; but we shall have occasion hereafter to consider to what extent they can be reached by those laws while they are on board the ship of another state. With respect to navigation, the ship is an individual subject of the nation whose flag she bears, and whose warrant she carries for her conduct; she is part of the land to which she belongs, and of that land the master and crew, whatever may be their proper country, are temporary denizens; to

the laws of that land all her inhabitants are amenable, and by those laws they are all protected.

561. THE AREA of the waters, as we have already seen, is divided into open or high sea, waters of communication, and national waters. We shall have to describe these divisions more in detail.

562. ON THE OPEN sea all ships are governed by the law of Nature, and by the law maritime or law of the sea, a department of the supreme law of nations.

563. THE LAW OF NATURE is, in some respects, distinct from the law of nations; it, like moral obligations, affects acts, as to which the law of nations is silent, and as to which the municipal laws of different countries may be silent, or contain unaccordant provisions. So far as the subject of this work is involved, it applies chiefly to maritime slave-trade, and some passages in the law of war; we therefore postpone its consideration.

564. THE MARITIME LAW is the law of the open sea, but its general provisions are affected by the exceptional state of war, which has introduced into it a chapter, which we shall separately exhibit as the Maritime Law of War.

565. Certain principles may be enunciated as equally applicable to all its provisions, to the general maritime law and to the law of war—indeed, to the whole code of the law of nations, the universal law.

566. All nations must be regarded as one great commonwealth, governed by this general system of law.

Every nation must be regarded as possessing equal rights, equal honour, equal wisdom, and equal power to assert and maintain her rights and the rights of her subjects.

The violation of any ordinance of the law of nations, as to one nation, or the subjects of one nation, must be regarded as an offence against the law of all nations; and as entitling all, or as many of the nations as feel affronted, to chastise the offender and vindicate the law.

567. The law of nations is the supreme law; it constitutes



a part of the law of every country. The subjects of every country are bound by it, whether on the open sea, in their own country, or in any foreign land, in their conduct, contracts, and social relations to all their fellow-creatures, whether of a different country or their own.

568. No legislature of one or more nations can alter the law of nations, or make a valid ordinance to bind any, except their own subjects, in contravention of the maritime or any other department of this supreme law, either upon the open sea or in the territories of any other state.


569. Any nation affected by such attempted alteration has a right to reparation for any injury which she or her subjects may thereby sustain.

570. It must however be observed, that neither the subjects nor even the judicial tribunals of any country can refuse to obey or enforce the clearly expressed law or ordination of its legislature, although in contravention of this supreme law.

571. The judges of each country must assume that its legislature does not intend to legislate for the government of the territories of other countries, or the subjects of other countries within foreign territories, or on the common area of the open sea, and therefore that its ordinances do not affect them; but such assumption must yield to the incontrovertible language of the law.

572. Judges, in the exercise of their functions, cannot assume the office of legislation, far less can they assume the correction of the laws which the legislature of their country has ordained.

573. If the legislature has usurped the office of enacting laws to govern foreigners in their mutual relations on the open sea, or even in the dominions of their own states, the judge can act only as the minister of the law, he cannot hold it void or oppressive; he is the officer for the construction and administration, and not for the abolition or modification of the positive law; when the mandate is express, he must perform it. (See Zollverein; Johannes; Annapolis; Cope v. Doherty.)



574. The judges of one country are bound by no allegiance or duty to the legislature of another; they would hold such inconsistent ordinance simply null and void.

575. As the legislature of one country cannot make a valid ordinance to bind any except its own subjects, in contravention of the maritime law, either on the open sea or on the waters of another nation, it clearly follows that the executive authority of one nation, whether a king in council, or of any other designation, does not possess such power. The officers under the direction of the Executive are bound according to the relations between them; but the rest of the subjects are not bound by such invalid ordinance, and the judges are not bound to enforce it, but ought to regard it as void. It must however be borne in mind that if such ordinance by the Executive is made in strict accordance with, and under a power vested in it by the legislature, it must be regarded as imposing the same obligation on the subjects and tribunals as if it had been the direct expression of the legislative voice.

576. It must further be assumed that a nation does not by its municipal law legislate so as to impose on its own subjects on the open sea, or in a foreign dominion, an obligation to act in a manner inconsistent, in the first case, with the general law, or, in the second, with the law of the foreign nation.

577. It is competent to several nations by agreement to constitute laws for the government of their respective subjects, and also for the government of the subjects of each other, within such limits of space and matters of legislation, and on such conditions, and with such mutual or reciprocal powers of enforcement, and by such tribunals, and with such aid to each other, as their legislatures may ordain. Such conventions are binding upon, and constitute the laws of all the nations, and subjects of the nations parties to the contract; but in no manner affect any other nation or people. As we shall have to refer to such conventions, we

will designate the nations parties to them "associated nations," for want of a better term.

578. It is further competent to a nation not only to exempt the subjects of other nations residing within its limits from its municipal laws, or the jurisdiction of its tribunals, but to authorize other nations not only to make laws binding on their subjects within its dominions, but to constitute tribunals there for the administration of such laws among their subjects, or even between their subjects and its own. It cannot authorize one foreign nation to make laws or constitute tribunals within its dominions, for the regulation of transactions by which the subjects of another nation are affected, without the concurrence of such other nation.

579. Limited concessions of this character were frequently made in the Middle Ages, not only to foreign states, but to foreign towns and trading communities, as to the Hanse Towns collectively, as though they had formed an aggregate state, or to some of them severally, in almost every country of Western Europe. English, Flemish, and French towns held similar privileges and jurisdictions in foreign countries in which they had permission to trade; indeed, some degree of internal independent government seems to have been the almost uniform attendant of such permission.

580. Such concessions existed in a more conspicuous form in the Venetian and Genoese establishments at Constantinople before the fall of the Empire; and the Sultans, with the oriental respect for trade, have conferred extensive privileges on various maritime states.

581. The Queen of England is empowered by Parliament (6 & 7 Vict. c. 94, s. 1) to exercise any jurisdiction which she then had or might thereafter acquire in any country out of her dominions, in the same and as ample a manner as if such power or jurisdiction had been acquired by cession or conquest. An Order in Council, 27 August, 1860, prescribes the exercise of such jurisdiction to be in accordance

with the rules of equity, common and statute law, and other laws in force in England. Under these sanctions on the part of England, and the concession of the Sublime Porte on the part of Turkey, the Consul-General holds a supreme consular court at Constantinople, as a court of law and equity, and with an Admiralty jurisdiction over all British shipping in the Turkish waters of the Levant. Nor is this privilege accorded exclusively to the English; and between the different consulates, customs and usages and a comity have grown up convenient for navigation, though in some respects, but for such comity, inconsistent with strict international rights. (See *Iaconia*.)

582. The comity of nations acquiesces to some extent in the legislation of other nations for the protection of its revenues, as by prohibiting the hovering of foreign ships on the frontier of their marine dominions, although beyond the presidial line. But, at least in dealing with her own subjects, a nation does not regard a foreign revenue law.

583. A nation has a right to legislate as to the conduct, the rights and liabilities of foreign ships and persons, either as to their relations with each other, or with the national ships, within its own waters, its own presidial line. It has a right to impose just and reasonable conditions on all foreigners and their vessels, as the terms on which they shall participate in the enjoyment of its commerce and its protection, and to require conformity with its laws. Such provisions prevail in maritime nations in respect of clean bills of health, pilotage regulations (*Annapolis*), and many other nautical requirements. But in all legislation to bind foreigners, particularly on the verge and frontier of its marine territory, where the law of the sea and the municipal law may come into collision, especial regard ought to be had to the maritime law.

584. Although no nation has a right of legislation over any part of the dominions, or in respect of the conduct of the subjects of any other nation, except as to their conduct

within its own dominions, yet it has power of legislation in aid of the laws of foreign nations, and of the general law, and for the enforcement within its realms, and by its tribunals, of the rights arising out of the contracts and relations of foreigners towards each other, or towards the subjects of its own realm, whether they arose within the limits of the foreigner's own nation, or of a different nation, or on the open sea; but only for the enforcement of rights recognized by the nation in which such contract was made, or such relation was created, and of the rights recognized by the general law, when such rights have arisen on the open sea. In such cases, the municipal is ancillary to the supreme law.

585. It is not peculiar to maritime affairs; it is a universal principle of law and common sense, that the contract, express or inferred from the relations of the parties, is to be construed according to the law of the country or place in which it arose; to be enforced according to the law, rules, and practice of the country before whose tribunal it is tried.

586. In the application of international law, the state is to a great extent responsible for the conduct of its subjects. They are therefore bound to adopt the interpretation which it imposes on that law.

587. **THE LAW OF THE SEA.**—The law maritime governs all ships on the open sea, in waters of communication, and even in all national waters, except where and so far as it is altered or modified by local customs, which may indeed be regarded as parts of that law, or by laws of convention between different nations, or by municipal laws.

588. **ON THE OPEN SEA,** the ships of different unassociated nations in relation to each other are governed exclusively by the maritime law; the ships of the same nation in relation to each other are governed by the maritime law in every respect, except where their rule of conduct is prescribed by their own municipal law. The ships of associated nations are bound by the maritime law in all respects, except where their rule of conduct is prescribed by laws

made by both or either of the nations so associated, in accordance with the terms of their convention.

589. **IN WATERS OF COMMUNICATION**, which are in one sense part of the high sea, and in another part of the national waters, foreign ships are governed by the law of the sea, except when expressly comprised within a municipal law regnant over such waters; the national ships by the law of the sea, except where their rule of conduct is prescribed by their own municipal law.

590. **IN NATIONAL WATERS**.—Even within the presidial lines of all nations the law of the sea reigns alike over foreigners and subjects, except when and where, and to the extent in which, and as to the persons as to whom it is altered or modified, or positive regulations are introduced.

591. **OPEN SEA** is the whole of the oceans and seas and lakes which are not within the ambit of any presidial line,—indeed, negatively all except national waters. It includes therefore of all waters of communication so much as lies between the presidial line of either shore, whether both sides belong to the same or to different states.

592. **WATERS OF COMMUNICATION** are those parts of straits, channels, and rivers, which, though constituting parts of the waters within the presidial lines of one nation, either by reason of their constituting communications between two seas or portions of a sea, or between two or more nations, are subject to the transit rights of other nations, and in that sense portions of the open sea.

593. It may be convenient to designate, in respect not only of such portions, but with reference to the relations between any nation and foreigners as to the national waters, the nation to which such waters belong as “the dominant nation,” and other nations having, either from peculiar position or relation, or concessions, any peculiar rights there, “privileged nations,” and other nations in general, “foreign nations.” Such rights are suspended or abridged by war, or the suspicion of war.

594. A strait between two open seas, although of less breadth than two, or even one, marine league, and whether constituting a boundary between several, or entirely comprised within the compass of one nation, so far partakes of the character of the seas which it connects, as to entitle all mariners to traverse it for the purpose of passing from one of the connected areas to the other. In time of peace it must be regarded, as to foreigners, as part of the high sea.

595. The King of Denmark claims sovereignty over the two Belts and the Sound connecting the North Sea and the Baltic; but the ships of all nations have a right of transit through these waters.

596. A RIVER, although of less breadth than one marine league, whether flowing between several nations, or in its whole breadth in any part flowing through one nation, constituting waters of communication with several riparian states, so far partakes of the character of the ocean, that all nations, especially those on its banks, are entitled to navigate it to and from the ocean.

597. It is alleged that the right is confined to the nations located on its banks; but we apprehend that every nation in amity with those through which the river flows, are entitled by the navigation of the lower part to reach the nations above.

598. The right to navigate a strait or river has, incident to it, the right of using all means necessary for its reasonable enjoyment, such as the right to moor and anchor in convenient places, to load and unload in case of necessity, and even to make a necessary use of the shore.

599. And the right extends to the use of every navigable part of the area convenient for the purpose of the passage.

600. All nations entitled to navigate such a strait or river, are entitled to pursue that navigation free from any toll or payment for mere transition over the waters. This is a consequence, for no man is entitled to interfere with,

or to tax the right of another, and all have a common right to navigate the sea.

601. But the dominant nation is entitled to charge others using it, in the same manner as it charges its own subjects, with a fair compensation for the benefit of lights, erections, and other appliances for the safety and convenience of the navigation.

602. The King of Denmark, on the pretence of prescription and treaties, claims a right to tolls for passing the Belts and Sound; but he feels it necessary to base the demand on the protection which he affords from pirates and perils of the sea by his guardships, marks, and lights. Of course, what any nations may contract by treaty to pay, may be due under the contract, irrespective of foundation in right; and in respect of the protection rendered by marks and lights and vessels of war, the King is entitled to a reasonable compensation; but in the absence of treaty it is a violation of the law of nations to disguise or enhance a transit toll under the name of a toll for nautical protection or aid.

603. The dominant nation is entitled to the establishment, recognition, and observance of all such precautions and regulations as are necessary for the security of its own coasts and commerce, particularly against ships of war.

604. It is obvious therefore that the rights of other nations on some waters of communication must be merely passive, difficult of enjoyment without mutual arrangement, and, to a reasonable extent, under the control and regulation of the dominant nation.

605. The navigation of great rivers, the only outlets and inlets of the commerce of the upper riparian nations, through the territories of other states, requires so much precaution for the security of the various parties interested, as to still more require for its due enjoyment regulations agreed upon among them, with full consideration of their respective interests,—more especially when the navigation is in part through channels of communication improved or constructed by art.



606. The question arose between Spain and the United States, before Florida was ceded to the latter, as to the navigation of the Mississippi. Spain, in 1795, acquiesced in the claim. It again arose between the United States and Great Britain, as to the navigation of the Lakes and the St. Lawrence, which, by reason of the navigation being in part artificial, was attended with an additional peculiarity. That was settled by treaty.

By treaty, dated the 5th June, 1854, and confirmed by Parliament (18 Vict. c. 3), Art. 3,—“Certain specified articles, being the growth and produce of the British colonies of Canada, New Brunswick, Nova Scotia, Prince Edward’s Island, and the islands thereunto adjacent (and Newfoundland, if adopted by the legislature of Newfoundland), or of the United States, are admitted into each country respectively, free from duty.”

And by Art. 4 the citizens and inhabitants of the United States have the right to navigate the river St. Lawrence, and the canals in Canada used as the means of communicating between the Great Lakes and the Atlantic Ocean, with their vessels, boats, and crafts, as fully and freely as British subjects, paying the same tolls and assessments. The British Government reserved the right of suspending this privilege on due notice. In case of such notice, the United States has the right of suspending, during the same period, the third Article, so far as it affects Canada.

And British subjects have the right freely to navigate Lake Michigan, which is wholly within the ambit of the United States, with their vessels, boats, and crafts, so long as the privilege of navigating the St. Lawrence continues; and the Government of the United States engaged to urge upon the State Governments to secure to the Queen’s subjects the use of the several State canals on terms of equality with the inhabitants of the United States.

607. The South American rivers are for the most part rendered free to commerce by conventions between the na-

tions on their banks and the United States and several European Governments. The necessity of such arrangements is obvious; for the Amazon, and its five navigable tributaries, are occupied by six sovereign states.

608. TREATY OF VIENNA.—By the general and several particular treaties signed at Vienna, of different dates in 1815, provisions were made for the free navigation of the rivers of Central Europe, more especially the Rhine, the Necker, the Maine, the Moselle, the Meuse, the Scheldt, and the Po.

It was declared that the Powers whose states were traversed or separated by the same navigable river, should regulate it by common consent as to all that regards navigation, and that the navigation of such rivers along their whole course, from the point where each of them becomes navigable to its mouth, should be entirely free, and not, in respect to commerce, prohibited to any one; it being however understood that the regulations established with regard to the police of this navigation should be respected, as they should be framed alike for all, and as favourable as possible to the commerce of all nations. Provision was made as to uniformity of system, as to tariff, and as to the offices for the collection of duties; and it was agreed that each state bordering upon the rivers should be at the expense of keeping in good repair the towing paths which pass through its territory, and of maintaining the necessary works, through the same extent, in the bed of the river, in order that no obstacle might be experienced in the navigation. It contained a prohibition, with one temporary exception, of storehouse, port, and forced harbour dues. It prohibited interference of the custom-houses with the duties of navigation.

Special arrangements as to several of the rivers were contained in subordinate conventions. (See 1 Hertslet's Commercial Treaties, 3-45.)

609. By treaties between the sovereigns of the countries through which they flow, the freedom of navigation of the

Vistula, the rivers and canals of ancient Poland, the Elbe, the Weser, the Po, and the Douro, has been subsequently declared or confirmed.

610. By the treaty of Paris, of the 30th of March, 1856, Art. 13,—“The act of the Congress of Vienna having established the principles intended to regulate the navigation of rivers which separate or traverse different states, the contracting Powers (England, Austria, France, Prussia, Russia, Sardinia, and the Sultan) stipulate among themselves that those principles shall be equally applied to the Danube and its mouths. They declare that this arrangement henceforth forms a part of the public law of Europe, and take it under their guarantee.”

Art. 15. “The navigation of the Danube cannot be subjected to any impediment or charge not expressly provided for by the stipulations contained in the following articles; in consequence, there shall not be levied any toll founded solely upon the fact of the navigation of the river, nor any duty upon the goods which may be on board of vessels. The regulations of police and of quarantine, to be established for the safety of the states separated or traversed by that river, shall be so framed as to facilitate as much as possible the passage of vessels. With the exception of such regulations, no obstacle whatever shall be opposed to free navigation.”

Art. 16. “With the view to carry out the arrangements of the preceding article, a Commission, in which Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, shall each be represented by one delegate, shall be charged to designate and to cause to be executed the works necessary below Isatcha, to clear the mouths of the Danube, as well as the neighbouring parts of the sea, from the sands and other impediments which obstruct them, in order to put that part of the river and the said parts of the sea in the best possible state for navigation. And in order to cover the expenses of such works, as well as of the establishments intended to secure and to facilitate the navigation at the mouths of the

Danube, fixed duties of a suitable rate, settled by the Commission by a majority of votes, may be levied, on the express condition that in this respect, as in every other, the flags of all nations shall be treated on the footing of perfect equality."

Art. 17. "A commission shall be established, and shall be composed of delegates of Austria, Bavaria, the Sublime Porte, and Würtemberg (one for each of these Powers), to whom shall be added commissioners from the three Danubian Principalities, whose nomination shall have been approved by the Porte. This commission, which shall be permanent,—1. shall prepare regulations of navigation and river police; 2. shall remove the impediments, of whatever nature they may be, which still prevent the application to the Danube of the arrangements of the Treaty of Vienna; 3. shall order and cause to be executed the necessary works throughout the whole course of the river; and 4. shall, after the dissolution of the European Commission, see to maintaining the mouths of the Danube, and the neighbouring parts of the sea, in a navigable state."

Art. 18. "It is understood that the European Commission shall have completed its task, and that the River Commission shall have finished the works described in the preceding article under Nos. 1 and 2, within the period of two years. The signing Powers assembled in conference having been informed of that fact, shall, after having placed it on record, pronounce the dissolution of the European Commission, and from that time the permanent River Commission shall enjoy the same powers as those with which the European Commission shall have until then been invested."

Art. 20. "Until the treaties or conventions which existed before the war between the belligerent Powers have been either renewed or replaced by new acts, commerce of importation or exportation shall take place reciprocally on the footing of the regulations in force before the war, and in all other matters their subjects shall be respectively treated upon the footing of the most favoured nation."

611. **DARDANELLES AND BOSPHORUS.**—By a convention of the same date, the Sultan declared that he was firmly resolved to maintain for the future the principle invariably established as the ancient rule of his Empire, and in virtue of which it had at all times been prohibited for the ships of war of other Powers to enter the Straits of the Dardanelles and of the Bosphorus, and that so long as he should be at peace, he would admit no foreign ship of war into the said Straits. And the sovereigns of England, France, Austria, Prussia, Russia, and Sardinia, engaged to respect that determination of the Sultan, and to conform themselves to the principle above declared.

The Sultan reserved to himself, as in past time, to deliver firmans of passage for light vessels under flag of war, which should be employed as usual in the service of the missions of foreign Powers.

The same exception was applied to the light vessels under flag of war, which each of the contracting Powers was authorized to station at the mouths of the Danube.

612. **NATIONAL WATERS—EXTERNAL LIMITS.**—We have already described this area in general terms as bounded by the presidial line at a distance of three geographical miles, a marine league from the coast-line, which we have already described, when the breadth of the water admits of so wide a space, and by a presidial line corresponding with the mean line (*medium filum aquæ*) in waters, whether of narrow seas, straits, or rivers, where the whole breadth is less than two leagues.

613. This boundary is subject to various modifications,—some established by ancient enjoyment, others by force of conquest, and others by treaty. It has also various admitted extensions,—some permanent, some only for particular purposes.

614. The English claimed, irrespective of the limits now assigned to the marine territory of nations,—which, indeed, have only recently obtained a general recognition,—what were

called the King's Chambers. These are exhibited in a chart published by proclamation of James I. in 1604. The spaces in the sea enclosed within straight lines are twenty-seven,—Holy Island, the Sowter, Whitby, Flamborough Head, the Spome, Cromer, Wintertonnesse, Easternesse, Layestoffe, Estnesse, Orfordnesse, North Foreland, South Foreland, Dungenesse, Beachy Head, Dunenase, Portland, the Start, the Rame, the Dudman, the Lizard, Land's End, Milford, David's Head, Beardsie, Holyhead, Mona Insula. (Hall, p. 162.) They are said to extend eight leagues at sea, over against Harwich.

615. America claims the Delaware Bay, and other bays and estuaries of considerable breadth, as part of her marine territory.

616. Russia has claimed a sort of sovereignty and right to exclude all other nations from navigating or fishing along a considerable part of the north-west coast of America,—all above the 51st degree of latitude. This claim was disputed by Great Britain and the United States. It was arranged by a convention with Great Britain in 1825; and in 1824 temporarily with the United States, by the expiration of the period fixed the question revived, and was pending in 1855.

617. The laws of North Wales, the Gwentian (one of the codes supposed to comprise the institutions of Howell Dha and his sages in the tenth century), and the Triads contain provisions as to rivers, not unworthy of remark. A large river is not the boundary between two *cyrnwds* when overflowed, but when in its ordinary channel. (Gwentian Code, i. 765.) There are three common rights of a confederate country or of a border country,—a principal river, a high-road, and a resort to worship. (Triads, ii. 517.) The numerals refer to the volumes and pages of 'The Ancient Laws of Wales.'

618. Islands and islets, however imperfect, shoals and alluvial deposits rising above the water, forming projections

from, or appendages to the coast, ports, harbours, estuaries, creeks, and adjacent parts of the sea, enclosed by headlands within the presidial line of the mainland, or the presidial line of islands admitted to constitute part of the terrene dominions of the nation, are, as to the portions permanently or temporarily submerged, parts of its marine territory. But sunken shoals running far out into the sea are not to be accounted part of this territory. Whea. 233-248; Anna.

619. A lake, a channel, or a sea, entirely surrounded by the land territory of any state, is considered a close lake, channel, or sea, and wholly the marine territory of that state. Such the Euxine was considered when entirely within the Ottoman realm. Such are the Delaware and Chesapeake Bays to America, and the Bristol and St. George's Channel and Irish Sea to Great Britain.

620. So a sea or lake, entirely surrounded by the dominions of more states than one, and having no access to the ocean, belongs exclusively to the surrounding states,—as the Caspian. This want of access to the ocean is the distinction, and a distinction in principle which has been often entirely overlooked.

621. But a lake or sea of greater breadth than two marine leagues, and communicating by a strait or navigable river with the ocean, and surrounded by the dominions of more sovereigns than one, is as to all, except the portion within the presidial lines, open sea. Such is the Euxine, now embraced in part by the dominions of the Czar, and in part by those of the Porte. Such is the Baltic; although the contrary was asserted by the northern nations parties to the armed neutralities of 1780 and 1800. They contended that it was a close sea to all nations except those which had territories on its shores. Whea. 245.

622. By the treaty of Paris, 30th March, 1856, between England, Austria, France, Prussia, Russia, Sardinia, and Turkey, the Black Sea is neutralized; its waters and ports

are thrown open to the mercantile marine of every nation, and are formally and in perpetuity interdicted to the flag of war of either of the Powers possessing its coasts, or any other Power (Art. 11) ; except that by an annexed treaty of the same date, between Russia and Turkey, which cannot be annulled or modified without the assent of the Powers signing this treaty (Art. 14), Russia and Turkey have respectively the right to maintain in that sea the following vessels of war :—6 steam-vessels of 50 metres in length at the line of floatation, of a tonnage of 800 tons at the maximum, and 4 light steam or sailing-vessels, of a tonnage not exceeding 200 tons each ; and except that (Art. 19), in order to ensure the execution of the regulations which should be established by common agreement in conformity with the principles in that treaty declared, each of the contracting Powers has the right to station at all times two light vessels at the mouths of the Danube.

The commerce of the ports and waters of the Black Sea is declared free from any impediment, subject only to regulations of health, customs, and police, framed in a spirit favourable to the development of commercial transactions. Russia and the Sultan admit consuls into their ports situated on the coasts of the Black Sea. (Art. 12.)

The Emperor and the Sultan engaged not to establish or to maintain upon the coast of the Black Sea any military maritime arsenal. (Art. 13.)

623. INTERNAL LIMITS.—The area of national waters, dedicated to navigation, may be generally described as limited exteriorly by the presidial line, and extending thence into all the navigable harbours, creeks, inlets, and up all rivers, so far as they are capable of being conveniently navigated for general purposes.

624. “ But it is not every ditch in which the salt water ebbs and flows through the extensive salt-marshes along the coast, and which serves to admit and drain off the water from the marshes, which can be considered a navigable stream.



Nor is it every small creek, in which a fishing skiff, or gunning canoe, can be made to float at high-water, which is deemed navigable. In order to have this character, it must be navigable to some purpose useful to trade or agriculture. It is not a mere possibility of being so used under some circumstances, as at extraordinary high tides, which will give it the character of a navigable stream." (Shaw, C. J., in *Willan v. Blackbird Creek Co.*) A petty stream, navigable only at particular times of the tide, and for a short time or distance by small boats, is not to be assumed, as of course, to be a navigable river. *The King v. Montague*.

625. On the other hand, the flowing of a tide up a river, though small, and the use of it by even pleasure and other small boats, and the cutting of reeds there by the public, and similar acts, constitute evidence that it is public navigable water; but such evidence is not absolutely incontrovertible. *Miles v. Rose*.

626. The size and character of the channel generally indicates, what rivers are navigable, and to what extent; and in long-settled countries, general or particular customs and reputation have ascertained what smaller rivers and creeks are to be deemed navigable, and the extent and limits of the navigable area of all.

627. The Thames (including the Isis) is described as a navigable river from time immemorial so high as Bercot, in Oxfordshire, and for divers years last past somewhat further than Lechlade, in Gloucestershire, by the Act 6 & 7 Will. III. c. 16, which authorizes certain charges as a reasonable compensation for improvements of the navigation by locks, weirs, and other works.

628. The Severn is treated by the Act of Parliament 9 Hen. VI. c. 5 (anno 1430), and subsequent Acts, as a navigable river to Worcester, and other places. From that Act it will appear that its right bank, at least, was at that time a kind of debateable land, and the arena of a border warfare; and that its riparians, according to the custom of

the petty lairds of the African rivers and the Rhine, levied a toll on all who traversed the stream. "Because the river Severn is common to all the King's liege people to carry and re-carry within the stream of the said river,—to Bristol, Gloucester, and Worcester, and other places joining to the said river,—all manner of merchandises, and other goods, as well in trowes and boats as in flotes, commonly called drags, in every part joining to the said river; within which river many Welshmen and other persons, dwelling in divers places joining the said river, have now late assembled in great numbers, arrayed in manner of war, and taken such flotes, otherwise called drags, and them have hewed in pieces, and with force and arms beaten the people which were in such drags, to the intent that they should hire the said Welshmen and other persons for great sums of money, boats and other vessels, for carriage of such merchandises and other goods and chattels, to an evil example and great impoverishment of the said liege people, if remedy be not hastily provided; it is ordained that the said liege people of the King may have and enjoy their free passage in the said river with flotes and drags, and all manner of merchandises and other goods at their will, without disturbance of any; and if any be disturbed of his free passage in the said river, the party grieved shall have his action according to the course of the common law."

After reciting the preceding Act, it was ordained that any person, of whatever estate, degree, or condition, who should take any imposition of any of the King's liege people for trow, boat, or any other vessel, for any goods or merchandise carried or conveyed in and upon the said river or water of Severn, or let, vex, or interrupt any boats, trows, or other vessels so passing by the said river, for any such imposition or otherwise contrary to law, should forfeit twenty pounds,—two-thirds to the King, and one-third to him who should sue. But it was provided that the Act should not extend, or be prejudicial or hurtful to any person having lands or meads adjoining the river, to take of every person going on his land

and haling or drawing every such trow, boat, or vessel, reasonable recompense and satisfaction for such hurts or offences as he should sustain by reason of such goings or drawings of such vessel; and it was provided that any person, or corporation, claiming to have title to any manner of duty or imposition on goods so passing, might endeavour to establish his title before the Star Chamber, previously to the Feast of the Ascension in 1505. 19 Hen. VII. c. 18.

After reciting that the King's subjects passing upon the river and water of Severn had used time out of mind to use and have a certain path of one foot and a half broad on every side of the said river, for drawing up by lines or ropes their trows, barges, boats, and other vessels passing or re-passing on the said river with wine, or other merchandise, without imposition, tax, or toll to be demanded of them that should carry wine in any of the said vessels for the said passing or drawing in the said paths accustomed; till now of late certain covetous persons have perturbed and interrupted many of the King's subjects haling and drawing up their vessels in the said paths, taking of them fines and draughts, and bottles of wine, and yet daily use to take, to the disturbance and loss of many of the King's subjects, the legislature proceeded to prohibit such interruption, and the taking or demanding of any toll called a draught, or bottle of wine, or any other tax or imposition, under a penalty of forty shillings. 23 Hen. VIII. c. 12.

629. RESTRICTION AND EXTENSION.—The navigable area may be either restricted or extended by the operation of natural causes. It may be restricted by the silting up of a harbour, a river, or creek, or the accumulation of sand or pebbles on the shore, or by what is called the recession of the sea. (*The King v. Montague*.) In such an event, a highway by land may by usage become substituted for the previous water-way.

630. So it may be extended either by the gradual or the sudden encroachment of the sea. If the sea take possession

of the shore, or even of the adjacent bank, so as to form over it, either at all times, or on the rise of the tide, a surface convenient for navigation, that space becomes an addition to the navigable area, and subject to the mariner's rights. If the marine accession is gained by slow and imperceptible degrees, the bed and shore become part of the dominion of the Crown. (Hull and Selby Railway case.) If it is gained suddenly, the soil beneath still remains vested in its former owner.

631. It is competent to the sovereign to make or authorize such extension by artificial means, as the clearing and deepening of rivers, as he may think for the public benefit, within the public domains; but it is competent only to that department of sovereign power,—in Britain the Parliament, in America the Congress,—in which the eminent dominion is reposed, to make or authorize such extension into or upon private property, or in derogation of private rights; and that only on due compensation to all whose property or rights may be damaged by the change.

632. It is in exercise of this power that authority is given to companies and adventurers to improve the navigation of rivers, and to form canals, and to charge a reasonable toll for the use of the accommodation. In illustration of this kind of grant, it is sufficient at present to refer to the Act 16 & 17 Car. II. c. 11, s. 1, for making the Medway navigable. This Act authorized a company to cleanse, scour, dig, widen, deepen, and make navigable the river Medway, and empowered bargemen to use a towing-path on either side of the river, on giving satisfaction to the persons injured thereby, and conferred on the company a right to compensation for the use of this aqueous highway. Further powers were given by a subsequent Act, 13 Geo. II. c. 26. These grants were held to vest in the company a kind of property in the water, subject to the ordinary riparian rights. *Medway Navigation Company v. Romney*.

633. The uncovered shore is a highway for the public as well as the water with which it is covered at the flood. It

rests therefore with the sovereign on an estimate of public advantage to restrict the navigation and extend the terrene highway, by stopping back the water, and forming a causeway, an embankment, or a bridge.

634. In this country, such appropriation may be made by the legislature without, and by the Crown upon, an inquiry in a prescribed form, whether it will tend to the public good; and where a road has been permanently formed across an inlet of the shore, and enjoyed for a great length of time, it is to be presumed that it was formed on sufficient authority, and, if necessary, with the public assent. (Com. Dig. Chemin. A. 1. Fitzh. Nat. Brev. 515; the King v. Montague.) It is only a beneficial modification of the public right.

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## CHAPTER II.

### RIGHTS ON THE WATERS.

WE propose now to embark upon the waters in peace, and to endeavour to travel in safety, and to accommodate those we meet.

635. OPEN SEA.—All who have access to it have a right to use the open sea. The mariner of every nation is equally entitled to traverse and convey his merchandise across its wide expanse. There is no property in the billows; there is no ownership of the storm. Yet man has made the wave, the wind, and even the lightning, subservient to his convenience.

636. The use of the sea, then, in a sense, belongs to all nations, for their common enjoyment. The right to enjoy can be exercised only by individuals, and every one has an equal right. But the protection of the right is not entrusted to their single prowess.

637. The protection and regulation of the universal rights

are confided to all maritime nations,—as a supreme court, which however is rarely convened.

638. An aggression on the rights of subjects of any nation must not be avenged, though it may be resisted and repelled, by those on whom it is made; vindication belongs to the nation, the subjects of which are entitled to redress.

639. As the nations are the protectors of universal rights, so each nation is the protector of the rights of its own subjects; and the regulation of those rights,—in the open sea, by and in conformity with the law of nations; in its national waters, according to its domestic policy and municipal law.

640. As the sea is the highway of the world, every one is equally entitled to travel over it, and consequently without taxation or toll.

641. The ocean is the common area on which the ships and the merchants, the armaments and the commerce of all nations meet; the high-road on which they salute and travel together in amity, and associate against the robbers and dangers of the sea; the arena on which hostile navies encounter, and emulate the destructive storms in hurling and scattering wide the thunderbolts of war. This vast concourse, bent on their different pursuits of science, pleasure, profit, and mischief, travelling in amity and good-fellowship; in competition, in rivalry, in arrogance, and the pride of power; in hostility, in hatred and revenge; hustled together by the currents, the winds, and the waves; rushing towards each other in the heedlessness of their fast career, in the darkness of the fog, in the gloom of night, or in their flight from the common danger or the common foe; this vast concourse requires for its regulation and welfare strict and stringent laws.

642. The ships of each nation are “floating portions of her territory,” and amenable to her laws. Her merchant ships are her villages and marine bazaars, the representatives of her wealth; her war-ships are her floating fortresses and

citadels, the emblems of her pomp and power. Every man of their crews demands the protection, and is subject in all respects to the action, of her laws. They are regulated by the stern and irresistible behests of the municipal law in all their conduct towards each other, and in all their conduct, so far as it is by that law prescribed, towards others whom they may meet upon the sea, and there are constituted powers by which the offender may be imprisoned or enchained. There are constituted courts by which he may be tried, and there is an authority, irresistible and beyond appeal, by which the sentence may be enforced.

643. Whatever may be the law of nations, the mariner is bound to obey the ordinances and mandates of his own peculiar law, not only in relation to his fellow-subjects, but in relation to all his fellow-travellers on the sea, as well in what concerns international as in reference to his country's affairs. But when his own law is not express, and the letter of his prescribed duty is silent, he must obey the maritime law.

644. When the mandates of his sovereign are clear, he must accept them as the true version of international law, however inconsistent with his own opinion, or the doctrines of other states. While he so acts, his sovereign and his country are responsible for his conduct, and bound to obtain for him redress, or in some instances, at least, to compensate the loss which obedience may induce. And obedience may induce the capture and condemnation of his ship and cargo, under a construction of international law, with which his country does not accord. He cannot lawfully resist; he must appeal to his government for reclamation or redress.

645. A law which reason alone proclaims, which there is no arbitrament but the doubtful arbitrament of arms to immediately determine, and no supreme or impartial tribunal to immediately enforce, ought to govern, and to a certain extent does, and as nations grow more wise and improve in civilization will, govern the mixed and mingling multitudes which gather upon the sea.

646. As to the laws of the ocean in time of peace, there is no great discord among maritime states. They have one common interest,—the increase of their commerce and the safety of their ships. And their laws have one common source, the Phœnician laws, as exhibited perhaps with improvements in the laws of Rhodes, promulgated in the Roman code, and reiterated and amplified in the collections, decrees, judgments, and ordinances of Amalfi, Barcelona, Oleron, and Wisby, and enlarged, and corrected, and adapted to particular localities by experience, observation, and good common sense.

647. As to the municipal laws in time of peace, there is little occasion for conflict; with maritime law, any discrepancy can arise only from different views taken by different nations as to what is most expedient for the common weal. Their interest in the navigation of their own waters in time of peace almost as much demands the accordance of the people of other nations as the navigation of the open sea. Different rules for the ships of different nations are more dangerous than the most common rule universally observed, for obedience to discordant rules almost necessarily occasions, not simply conflict, but collision of their laws. It ought, therefore, to be assumed, in the absence of the most explicit declaration, that no nation prescribes for the conduct of even her own subjects rules at variance with the law of the sea.

648. Hence it follows that there is nearly a general accord among nations as to the maritime law in time of peace. When Mars and Bellona excite the nations to fury, we shall find that they more seriously disagree.

649. The maritime law then governs the ocean, and, subject to the ordinations of municipal laws, every port and harbour of the world. Observing them, every ship and shallop has a right, with her wide canvas, her mighty engines, her sweeps or her oars, as she likes and as she can, to ride the unbounded wave.



650. THE MARITIME TERRITORY of a nation is subject to its municipal laws, in the same manner as its terrene dominions. But the people of other nations have certain absolute and certain modified rights with reference to that territory, and also the adjacent land. They have an absolute right granted by nature, that the ports and harbours shall not be destroyed; they have an absolute right to fly to them, and to run to and land upon the shore to escape the perils of the sea.

651. FOREIGN SHIPS.—The private ships of every nation have a right to sail into the ports, harbours, and creeks of every other nation for the purpose of refuge in distress. The sovereign of the country is not at liberty to deny that asylum, far less to retract the stipulation in that respect usually contained in treaties between friendly Powers.

652. They have a right to sail into the ports, harbours, and creeks open to and appointed for commerce, not only for the purpose of refuge, but also for necessary provisions, water, and repairs.

653. They have also the right to sail into such places for the purposes of trade, of science, or even amusement.

654. The dominant nation has no right to levy any tax or duty for the mere passage over her waters.

655. The foreign vessel has not, however, any right to fish in or to take away any of the productions or contents of those waters; except that she has a right to take fish for her immediate subsistence, and she has a right to supply herself with necessary water from the public streams, so far as it can be obtained without trespass on private rights. In fine, the whole navigable area of the national waters, with all its ports and harbours, is, under due regulations, subject to the right of peaceful navigation by all the nations of the world. Some entirely deny this right, some limit it to particular ports or places; but neither is this denial nor this limitation consonant with the law of nations.

656. If the European and American states are entitled to compel China and Japan to trade with them, China and

Japan have a right to send their junks and to demand admission to trade in the European and American ports.

657. Yet, assuming the right, it must not be forgotten that, according to the law of nature and nations, there is a subordination of rights; and that the right of strangers is subordinate to the conflicting rights of the people of the land.

658. It is also a right which, on account of physical difficulties, cannot be at any time fully, and at some times cannot be to any extent, enjoyed without the acquiescence and even assistance of the people to whom the national waters belong. Moreover, it is a right which must of necessity fall under the regulation of the dominant nation; therefore it obviously is not an unconditional right, yet it may be more proper to describe it as passive, subject to suspension and control, than imperfect. It is more capable of definition than of being enforced.

659. The dominant nation is necessarily the sole judge, in the first instance at least, of the admission and limitation of the right; and against its determination the right of the foreigner is in the nature of an appeal to the principles of international law.

660. The dominant nation, having on reasonable grounds the right to prohibit the trade of all foreign nations, or of any one or more of them, and having the sole right of regulating that trade, and her self-interest being a powerful incentive to her reasonable exercise of that right, the case can hardly occur in which the law of nations would pronounce the prohibition wrong.

661. It must then be conceded to a nation that she has on reasonable grounds, perhaps we ought to say on grounds which she deems reasonable, a right to prohibit the access of foreign ships of all nations, or of a particular nation, to her coast, except in stress of weather, for necessary provisions or repair.

662. But such prohibition must be announced to the

prohibited nation; and until announced, the ships of that nation already on voyage have a right to enter in peaceable pursuits the forbidden ports, according to the pre-existing regulation, and on the pre-existing terms.

663. The prohibition, according to the law of nations, should not be arbitrary or dogmatically expressed; it should state the grounds on which it is founded; for although other states may not be entitled to examine them too critically, they have a right to see that the nation which resorts to so extreme a measure does comport herself consistently with the good conduct of the community of nations. Otherwise they, having the same latitude of judgment on that point, and not more than an equal responsibility, may be justified in treating such prohibition as sufficient cause for war.

664. THE MERCHANT-SHIP then, at least in the absence of such prohibition, has a right to visit every friendly state; but the exercise of that right must be subject to regulations, and all commerce is subject to revenue laws and a variety of conditions, and though no tax can be levied for mere transition over the waters, yet reasonable charges may be imposed by way of compensation for the benefits derived from the artificial accessories to the safety and convenience of navigation.

665. The making of such regulations is an act of sovereignty, and in the absence of treaty, any rules, or even laws, prescribed by the nation to which the foreigner belongs, are subordinate within the marine territory, whenever they conflict, to the municipal law of the country to which that territory belongs. The comity, by which nations make some concessions on this subject, does not even qualify the proposition, inasmuch as that comity is part of the law of the land which adopts it, though imported from a larger law.

666. REGULATION.—It is competent to the sovereign to regulate the use of the national navigable area, as well by foreigners as by his own subjects, for the safety of

the nation, the security of its customs and other revenues, the general protection and benefit of commerce, and the conduct and convenience of navigation, the collection of due compensations for lighthouses and other improvements and accommodations, the reward of pilots, and for all other public purposes; and for such purposes to prescribe certain limits as ports and convenient places within them, as the only places at which ships shall touch, or land their men or goods except for refuge from pirates or other enemies, or on account of stress of weather, want of water or provisions, or other necessary uncontrollable circumstances.

667. It may be stated as a general proposition, that as to navigation, the same rights, obligations, and liabilities, the same rules and regulations prevail within the national waters, the ambit of the presidial line, between foreign ships of the same nation, between foreign ships of different nations, and between foreign ships and those of the dominant nation. It is subject to exceptions, for nations sometimes deny foreigners privileges which they secure to their own marine, and sometimes peculiar privileges are secured by treaty to particular nations, sometimes by specific description, sometimes by a reference to those conferred on other particular states, and sometimes, especially when regard is had to future changes, by reference to those enjoyed, or which may be enjoyed, by the most favoured nation.

668. It is competent to a nation to grant in its waters to another even the privilege of search for contraband of commerce or revenue over its own vessels, but not over the vessels of another state. The concession, it has been said, may be extended even to search for contraband of war; but inasmuch as if granted it must be accorded equally to each belligerent, and each may not have equal power to exert it, we conceive that the grant of such concession is inconsistent with the duty of a neutral power.

669. The freedom of the national waters was recognized in our early Saxon laws. "Let every merchant ship have

frith (freedom) that comes within port, though it be a hostile ship, if it be not driven and it flee to any frith-burgh and the men escape into the burgh; then let the men and what they bring with them have frith." (L. Ethelred ii. 2; *Ancient Laws and Institutions of England*, i. 285.) Again, by *Magna Charta*, 9 Hen. III. c. 30, reiterating an earlier law, "All merchants, if they are not openly prohibited before, shall have their safe and sure conduct to depart out of England, to come into England, and to go through England, as well by land as by water, to buy and sell, without any manner of evil tolls, by the old and rightful customs, except in time of war."

670. The merchant and his ship and crew are subject entirely to the laws of the countries which they visit as to all criminal matters, and as to all civil questions which arise and are determined there.

671. This liability of course may be, and sometimes is, modified by treaty. Princes who have permitted foreign nations to make settlements in their country, have not unfrequently conceded to them the right of civil government within that settlement. Amasis gave such right to the Milesians who settled at Naucratis. The Portuguese and English have assumed it in all settlements in the East, and it was conceded to the English on their recent arrangements with the Chinese empire. The Turks in the sixteenth and seventeenth centuries conceded such rights to the French, the Venetians, and the English. We have already referred to similar grants to the Hanse and other towns.

672. It is moreover modified sometimes by the provisions and exceptions of, and out of the municipal laws. France seems to accord to the subjects of a foreign state on board a private ship in her waters, a considerable degree of exemption from French law in respect of offences and transactions confined to the crew, and neither affecting others nor the public peace, unless the aid of the local power is required. *Whea.* 154, 155.

673. As between foreign ships of different nations, and between foreign vessels and those of the dominant nation, the jurisdiction of the country in which they happen to be is absolute; otherwise their conduct might be governed by different laws.

674. But whether or not amenable to the law of the country which she visits, the crew of a ship is neither relieved from nor deprived of the obligations and protection of her own municipal law as to questions between themselves, in which a foreign country is not concerned. A crime committed on board an English ship in the waters of a foreign state, may be treated as committed within the British realm. Negro case.

675. In compound or confederated countries, the jurisdiction over the national waters is sometimes divided and appropriated to a greater or less extent to the several states. In America, the then constituted states on acquiring independence from the British crown, and the new states on their creation, assumed the same or the like sovereign right as the common law of England had vested in the Crown as to navigable rivers, fishing, etc. Each has separately the more immediate control and management of the navigable rivers flowing through or beside its provinces; but subject to the superior authority of Congress for the general purposes of the Union. Ang. 131, 159.

676. FOREIGN WAR-SHIPS.—The right of navigating the waters, and entering the ports and harbours of every nation, exists in favour of the ships of war as well as the merchant ships of foreign nations. There is some difference however in the manner in which the right is to be exercised and enjoyed by the two classes of vessels.

677. War-vessels represent the state and dignity of their sovereign, who is responsible for the conduct of their officers and all on board.

678. Whether they enter under treaty stipulation, express licence, or that implied from the absence of prohibition,

voluntarily, in stress of weather, or in distress, foreign fleets or ships of war remain in the national waters, ports, or harbours under the protection of the dominant country; but, as a sovereign or his ambassador in a friendly state is exempt from its jurisdiction, so, but not to an equal extent, his ships of war and their crews are exempt from its criminal as well as its civil control. They cannot be attached or arrested for his debt. The privilege of the ship extends to her boats.

679. But this exemption does not extend to acts of hostility, or in violation of the safety or peace of the place, committed by the officers and crew (Whea. 157), or in England to excuse obedience to the writ of habeas corpus to produce a British subject unlawfully detained. King Frederick.

680. Nor did it extend to privateers, though bearing a commission, or their prizes, especially if such privateers had been fitted out in the ports of the dominant nation in violation of its neutral relations to another state. Whea. 158.

681. **USE OF THE NAVIGABLE AREA.**—The right of navigation extends over every part of the navigable area, whether in a strait or channel too narrow to admit of a league for the marine territories of the opposite states, or in the national waters of a single state. Its nature requires it. The mariner must be at liberty to pass from side to side, and over every part, on account of natural obstructions, and the course and mutability of channels, the changes of the wind, the direction of the currents, the presence of reefs or rocks, the formation of banks, and other impediments. *Williams v. Wilcox.*

682. On this area the right of the mariner is paramount,—it is his highway; but, like a wide common traversed by high-roads, it also is productive, and must be used with due regard to the value of its products. The right of passage does not involve the right of rambling, for no useful purpose, over the pasture of the common or the fishing regions

of the sea. The rights in the waters must be so exercised that all may fairly participate in them, and that the exercise of the paramount may not unnecessarily disturb or interfere with the enjoyment of the subordinate rights.

683. In the broad sea, in the proper channels, in the best anchorages and most convenient mooring-grounds, at the proper landing-places, the right of the mariner is supreme, and all inferior rights must, when necessary, yield. In fairly pursuing his voyage, in necessarily anchoring and mooring, in loading and unloading, landing from and boarding his vessel, the navigator is not answerable for damage to the nets or implements of the fishermen, or the disturbance of the fish, although in an exclusive fishery. But even in such places he must not trespass unnecessarily on the inferior rights, or inflict on others any injury beyond that which his occasions may require. Anon. 1 Camp. 517.

684. All the water-rights must be enjoyed according to their relative general, local, and personal importance, in the places and at the times most appropriate and convenient, and so that they may be exercised in harmony without confusion, interruption, or conflict, and in due subordination to each other.

685. As incidental to the right of navigation, the mariner has a right to use the bed and shore of the sea, and of the navigable river, to anchor, to tow, to drag, and push his craft, and to load from, and to land and unload, and for those purposes to pass over convenient portions of the shore. It is as common as the use of the water, and can be restrained or restricted only by the sovereign authority, by appointing ports and other places convenient for those purposes. Hale, 78; Ang. 178.

686. The right indeed of drawing boats, whether for profit or pleasure, and of travelling on foot, or even in carriages, along the sea-shore, is a natural right. It seems to be established by common practice throughout this realm. However, it was to some extent controverted by three of the



judges who decided *Blundell v. Catterall*,—a decision in which we cannot concur.

687. The distinction between the shore and the bank must be carefully observed. The former is public property, in which private subordinate rights may exist, but the public is paramount; the latter is private property, subject only to such public rights as have been established by custom, prescription, or dedication, or accorded by natural or municipal law. The mariner has then the right to trade and travel on, and make any proper use of, the shore; but he has no such right unless acquired by custom, or conceded by the owner, on the bank of the river or the sea.

688. In England, he is by custom, and, in some cases, by Act of Parliament, entitled to tow and drag his boat or vessel along ancient paths, on one or other or both sides on the banks of most of the navigable rivers. *Ball v. Herbert*.

689. This right has sometimes been invaded by exactions, in some cases charged with a reasonable toll. See the Acts already cited as to the Severn, the 14 Geo. III. c. 91 and 24 Geo. III. c. 8, as to the Thames, and the 23 Geo. III. cc. 41 and 48, as to the Trent; also *Zangers v. Whiskard*, as to the Lea, and *Ball v. Herbert*.

690. It will appear in subsequent pages that in case of shipwreck considerable privileges are accorded to the distressed mariner on the banks of the sea.

691. According to the Roman law, which originated in countries with an almost tideless sea, and where there was not that area which properly constitutes a sea-shore, the mariner was entitled to fasten his vessel to the trees on the banks of the sea or the stream, and to unload the cargo on those banks. A similar right appears to have been recognized in this country in the time of Bracton; but it was probably little needed and little used, and seems no longer to exist, except possibly in a few places where a usage of that character has prevailed.

692. In case of necessity, for shelter or refuge, to avoid

or escape from pirates, shipwreck, or the storm, to obtain water or assistance, the mariner, whether subject or foreigner, has the right to run into any inlet or cove, and to land and otherwise avail himself of the shore; and, subject to the obligation to avoid all evitable injury, and of making a reasonable compensation, to land and make other necessary use even of the private bank. (Hale, 51, 53.) It is a natural incident of the neighbourhood of such property to the sea. This doctrine has been disputed in a modern case, on the notion that when there is no fixed compensation there can be no right dependent on making compensation. But such objection is inadmissible even by the mere lawyer, far less by the jurist. There are cases of right dependent on compensation, with a right of action dependent on the sufficiency of the tender of amends. When the compensation is for that which cannot be the subject of prospective ascertainment, reason and the law must leave it to be determined by competent persons, and leave him who fails to do justice, or attempts an extortion, to bear the expense.

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### CHAPTER III.

#### CONDUCT AND RESPONSIBILITY.

693. **THE SHIP**—hugest of moving creatures, invested with so many rights, fraught with so much passion and power, requiring so much discretion for her conduct, charged with so many responsibilities, and for which nations are responsible,—must have a country and a name, a home in which inquiry may be made for her, an identification by which she may be known. From *Argo* downwards, she has been baptized.

694. In the periods of navigation when the Cinque Ports declared war against the Hanse Towns, and Scarborough

against the Scot; when Antwerp concluded treaties of peace with England's king, and Southampton with the Duke of Flanders and the Castilian towns; when Fowey, from the coves of Cornwall, sent forth more armed vessels than London and Dover combined, and the first stipulation in their conventions was, that the ports should become responsible for the vessels which they permitted to depart, it was necessary that the rover should be known. In some countries, the owner of an armed vessel is still bound to give security for her conduct before she leaves her port.

695. RESPONSIBILITY.—Her responsibility is measured by her duties, and her civil responsibility is to be answered by her freight and her body, to the extent of every fragment floating on the waters, or rescued from destruction when wrecked upon the shore.

696. She may be assumed to be endowed with the will and intentions of the owners, and to carry with her the authority to be inferred from her destination, her purposes, and her papers, which may be regarded as her will.

697. She is responsible, and in some respects her owners are further responsible, for her personal condition and conduct, for the conduct of her owners, of her master, her officers, her helmsman, and every member of her crew; except when wrested by the officers and crew from the duties she has undertaken, and converted into an involuntary engine of violence, of injury, or crime.

698. She is responsible for the observance of those duties which are imposed on her by the law maritime and the law of her own country, and the municipal laws which govern the national waters to which she may resort.

699. As to some of those duties, she is responsible to the state for mere non-observance, although no injury may ensue, and liable to penalties for transgression in mere neglect of the law.

700. But she is responsible to other persons and vessels only for the breach or non-observance of a duty, when it is

directly or indirectly, wholly or partially, the cause of injury or loss.

701. It follows that the enumeration and description of her duties will indicate her responsibility, and render it unnecessary to say in describing them that she is in fault, or liable to make reparation for injury occasioned by the particular breach.

702. Into whatever port she enters, whether of a foreign country or her own, she is liable to arrest and amenable to justice, and subject, with the freight she has earned, to lien and to sale, when necessary, for raising the means of making compensation for services and obligations, or atonement for misdeeds,—to proceedings *in rem*, against her proper person; and she is entitled to plead and stand upon her defence; she is entitled also to sue for the injuries she may sustain.

703. In some countries, the jurisdiction over her, and to which she may appeal, is exercised by a peculiar court,—in England by the Admiralty, in others by the ordinary tribunals; elsewhere she appears before judges, some of her own and others of a foreign land.

704. Any further responsibility of her owners rests for the most part with the ordinary tribunals, under the judgment of which she may be disposed of, but before which she does not personally appear.

705. What, then, are her duties? What is she to do, and what is she to avoid? We will endeavour to exhibit them concisely, and then to explain them in more detail.

706. She must assume a name and declare her nation. She must not disgrace the one, or compromise the interests of the other. She must not venture forth upon the ocean unprepared to travel in difficulties and darkness, to stem the current, and weather the storm. She must start in good bodily condition, with her sails, her engines, her boats, and smaller gear; in good mental condition—the master-mind to direct, the engineer to exert and control her

most powerful faculties, and with those competent to steer, with sufficient strength and nerve to weigh her anchors, to manage her engines and her sails.

707. The public will provide the landmarks, the light-houses, the signal cannon and rockets, and the loud-sounding gongs; but she must provide the private signals, and learn the language of the sea; she must be ready with the trumpet, to say where she is in the fog, and to exhibit her lights to indicate her course through the darkness; even her flags and her signals of salutation must not be wanting. "She walks the waters like a thing of life," and she must traverse them, for her own safety and that of others, with intelligence and caution.

708. In the bright hours of the night, and even in the clear sunshine, she must be observant of her course, and survey the waters with a watchful eye. Here and there is a single sail gliding gracefully upon the wave; she may float almost heedlessly among them. But the scene is changed; the wind has freshened; she is in a broad channel, the crowded highway of commerce, and in the adjacent cove the fishing-boats are lying at anchor. Here and there are vessels baffled by the breeze; there are others in stays, their sails fluttering, endeavouring to change their tack; there are unmanageable vessels in irons, they will not obey the helm; there are ships with canvas wide-spread on their rapid career before the wind, and others close-hauled upon it, holding on in opposite and transverse directions. There comes an enormous steamer defiant of the gale and the current, perhaps she carries contraband, perhaps the 'Alabama' is behind her. The good ship must steer watchfully and carefully, for she is surrounded with dangers. She must avoid all the helpless; she must give way to those close-hauled; she must pass on her starboard those coming in opposite directions; she must avoid as she can that reckless, that terrified steamer. The wind has grown to a hurricane, the sea is in frightful commotion; all are driven and drifting in confusion

around her; behold the shoals, the rocks, and the breakers; she must strain all her strength, she must manœuvre with all her skill,—the paramount law of the land and the ocean is the law of self-preservation.

709. This sketch of the ship's duties is insufficient; we must endeavour to specify them more particularly in some detail as to her name, her nation, her foreign and domestic rights and relations, her outfit, the signals she is bound to exhibit, the courses she must pursue, and the general conduct she is required to observe. And as these, so far as English law is concerned, are prescribed by a kind of marine code, embodied in three recent Acts of Parliament of rather long titles, it may be convenient to state that we shall refer to those Acts in the following manner:—1 M. S. A., the Merchant Shipping Act, 1854, otherwise 17 & 18 Vict. c. 104; 2 M. S. A., the Merchant Shipping Act Amendment Act, 1855, otherwise 18 & 19 Vict. c. 91; and 3 M. S. A., the Merchant Shipping Act Amendment Act, 1862, otherwise 25 & 26 Vict. c. 63. The suffixed numeral will indicate the section.

710. NAME.—The honest vessel must be baptized, and her name must be duly registered and recorded. She may be labelled and numbered.

711. If she is British, her name and the port of her home must be painted on her stern (1 M. S. A. 34), unless she is a yacht for pleasure, exempted by the Commissioners of Customs with the consent of the Board of Trade. 2 M. S. A. 13.

712. NATION.—Whoever built her, by whomsoever purchased, by whatever people her decks are manned, she must take the allegiance and obtain the recognition of some acknowledged Power, and the licence of that Power to unfurl her banner, before she sets forth upon the sea. Of some acknowledged Power we say, not of some acknowledged sovereign, for reasons hereafter to be assigned.

713. The ships of a nation are public or private; there is

a third class, which we may designate publicized vessels, and there was a fourth class, called privateers.

714. PUBLIC SHIPS belong to the state or its sovereign. In time of peace they constitute the sea-police, to suppress piracy, protect the revenues, maintain the quiet, and execute the political, the scientific, and ostentatious missions of the country, and to represent the state and dignity of the nation and the sovereign. In time of war they are for the purposes of assault and defence, and to arrest those who bear military assistance to the foe. Some are armed, some unarmed ; but armament is not essential to the public character, its indications are the public commission or employment exclusively by the state.

715. PRIVATE SHIPS belong to individuals, the merchant, the fisherman, the scientific or pleasure-seeking traveller, and to owners who let them out for hire. They are the property of the subject ; they have no concern in battles and conflicts ; their business is to attend to their mercantile and private affairs.

716. PUBLICIZED SHIPS are private ships employed by the Government for particular purposes, often temporarily, as in the transport of troops and military stores.

717. PRIVATEERS.—These were, a class which it is hoped may never reappear, private ships furnished by governments with commissions,—licensed marauders, authorized to destroy and plunder the merchantmen of the enemy, and under such authority accustomed to depredate upon their friends ; filibusters and pirates, more mischievous than such as pursued those avocations under their own commission and the blood-red banner of the buccaneer.

718. NATIONALITY.—Whether public or private, the ship is a part of the nation to which she belongs ; her inhabitants are the subjects of that nation, bound by its, and no other, municipal law ; her public ships are her palaces and fortresses, her private ships are her cities of industry and her mansions of peace.

719. The public ship and her nationality are known, and conclusively known, by her commission and her flag; that commission no other nation can question, that flag no other country can dispute. As between the nations, she is the property of the state whose commission she bears. No foreign tribunal can inquire into the title of her sovereign or demand production of her bill of sale, although she was built in the yards of the country in which that court presides, and originally fitted out for illicit war. Santissima Trinidad.

720. The private ship is liable to question, and, in war, to search. She must carry her credentials, her register, or her sea-pass, or some other document authorized by some government; such document incontrovertibly impresses the national character upon her in all her relations with other countries and her own, and with all the vessels and persons she may meet. In the absence of such document, she belongs to the country of the owner's domicile (Wheat. 413; *Vigilantia*; *Vrow Anna*; *Success*); but she must account for her unwarranted appearance on the sea. It will, however, be found that prize-courts, for the reward of captors, have made unjustifiable inroads on this principle of international law.

721. The officers of the customs may not grant clearance for any vessel until the master has declared the name of the nation to which she belongs, which they must inscribe on the clearance. Until the declaration is made, she is to be detained; and she is liable to forfeiture for the undue assumption, except to escape hostile capture, of a British character, or for the concealment of the British, or assumption of a foreign character. A person guilty of falsehood in the declaration, forfeits his interest in the ship, and is guilty of a misdemeanor. The master also is guilty of a misdemeanor if privy to a false representation of national character. And any unqualified person acquiring an interest in a British ship is liable to forfeit it, except in particular



cases, for which we refer to the statutes. And commissioned officers are authorized to seize for adjudication ships under this liability to forfeiture. 1 M. S. A. 102, 103 ; and 2 M. S. A. 9.

722. The purposes of revenue, the inhibition of the slave-trade, and the rapacity of war, require that she should bear such other papers as are necessary to indicate where she is going, what is her business, and of what articles the bulk of her cargo consists.

723. As a general principle, it may be stated that, as against the ship and the owners of cargo, fictitious documents are to be taken as true, that when produced in their favour, they are to be regarded as forgeries and null ; but there are circumstances which before the tribunal of one country excuse resort to such fraudulent representations, although such excuse is inadmissible in the forum of another. The proper criterion for the admission or rejection of such excuse is, whom were they intended to deceive ? As the question more frequently arises in that state, we defer its further consideration until we enter the region of war.

724. The national character of the master and crew, especially of a public ship, is that of the country to which the vessel belongs, and whose flag she is entitled to display.

725. The nationality of her owners should be inferred from the character duly stamped upon the ship ; but here again the spirit of war has introduced distinctions, with which we shall have hereafter to deal.

726. The national character of the cargo is imposed upon it by the documents under which it is carried, in their absence, by the character of the owner ; but this too will be further considered when we come to treat of war.

727. CONDITION.—The safety of the ship, her passengers and her crew, and of those with whom she may travel the waters, depends not alone on the storm and the tempest, and the sudden dangers of the sea ; it depends

mainly on her condition and her capacity to avoid, mitigate, or encounter the perils to which she may be exposed.

728. Before she puts forth on her voyage, it must be seen that she is seaworthy in her hull and all her apparatus; that her masts and her sails are in proper condition; that her machinery is ready for its work; that her helm is able to command her; that her boats and life-preserving implements are adequate to her occasions. Unless her body and limbs are in reasonably vigorous condition, she is liable for the mischief to which her deficiencies may contribute; not that every ship is expected to be a model of beauty, perfection, and power, but she must be in ordinary proper trim. *Argo*.

729. She must be manned and officered with strength and skill reasonably adapted to her size, quality, and purpose.

730. This adequacy of power and condition; this due appointment in officers, men, and apparatus; the seaworthiness, adaptation, and manageability of private ships, is matter of public concern. The ignorance and false economy of private shipowners would often lead to the sending forth of their vessels ill-governed, ill-manned, ill-equipped, with insufficient apparatus, unmanageable, and even unsound, if the law did not interfere.

731. It is the more necessary that the law should interpose as the shipowner is rarely on board. His vessel is entrusted to a commander seldom of great pecuniary responsibility; she is beyond the owner's personal control, and, in such case, his liability is generally limited to the surrender of his vessel, or payment of her value, for distribution among those who have been injured by her fault.

732. For such and other reasons, the laws of most countries do interfere by positive provisions,—in this country mainly comprised in the mercantile code to which we have referred; and as the dangers to be avoided by the shipping of other nations are the same, it may be inferred that to

some extent their legislation is in accord. This subject is clearly within the province of the municipal law.

733. The Merchant Shipping Act prohibits, under the penalty of £100 on the owner, or £50 on the master who is guilty of the default, the going to sea of any decked ships other than steam-tugs, ships engaged in the whale fishery, and ships having certificates duly obtained under the Passengers' Act, unless provided, according to their tonnage, with boats supplied with all requisites for use, not fewer in number nor less in cubic contents than prescribed by a schedule to that Act. It is sufficient to state that the schedule specifies the length, breadth, and depth of the boats, launches, and lifeboats required to be carried; the numbers to be carried by steam-ships are as follows:—by a ship 1000 tons and upwards, 7; from 360 to 1000 tons, 4 or 5; from 240 to 360 tons, 3 or 4; from 60 to 240 tons, 2 or 3; under 60 tons, 1: the number to be carried by sailing ships as follows:—600 tons, and upwards, 4 or 5; from 400 to 600 tons, 3 or 4; from 100 to 400 tons, 2 or 3; under 100 tons, 1. The larger ships are required to carry larger boats; two of those carried by steamboats of 1000 tons and upwards are lifeboats, and where there is an alternative number, one launch is the substitute for two boats.

734. Under the like penalties, it prohibits any such ship going to sea, carrying more than ten passengers, without having, in addition to such boats, one lifeboat with all requisites, or else one of her boats rendered buoyant like a lifeboat, and without being also provided with two lifebuoys; and it requires that such boats and lifeboats shall be kept at all times fit and ready for use. 1 M. S. A. 292, 293.

735. Every passenger-ship from the United Kingdom to places beyond Europe, except the Mediterranean, must have certain accommodations and space on the passenger-decks; greater if she is to pass the tropics. She must undergo a survey under the direction of the emigration officer as to her seaworthiness, and fitness and adaptation in all respects for

her purpose; as to which, certain arrangements and dimensions are prescribed. She must be furnished with boats according to her tonnage and number of passengers:—

2 boats, if 100 tons.					
3	"	200	"	and exceeding	50 adults.
4	"	500	"	"	200 "
5	"	800	"	"	300 "
6	"	1200	"	"	550 "

One must be a long-boat and one a lifeboat, kept properly suspended. All must be surveyed and of adequate size, supplied with all requisites, and kept clean and ready for immediate use. The ship must have two life-buoys, and adequate means for night signals, a fire-engine, and an apparatus for extinguishing fire. Such a vessel is exempted from the Steam Navigation Act, 1851, Passenger-Ship Act (15 & 16 Vict. c. 44. ss. 10, 12, 16, 24).

736. OFFICERS.—By the British law no foreign-going or home trade passenger-ship can sail except under a master and mate having certificates of competency from constituted authorities. 1 M. S. A. 136.

737. Every steam-ship which is required to have a master possessing a certificate from the Board of Trade, must also have an engineer or engineers authorized by the certificate of that Board. (3 M. S. A. 5.) The certificates are of two classes, first and second.

738. A foreign-going ship, if of a hundred horse-power, must have two certificated engineers, one at least of the first class; if of less than a hundred horse-power, one holding at least a second class certificate. A sea-going home trade passenger steam-ship must have an engineer holding at least a second class certificate. (*Ib.*)

739. Passenger-ships from the United Kingdom to places out of Europe, except the Mediterranean, must be manned with an efficient crew to the satisfaction of the officer from whom her clearance is obtained. (Passenger Ship Act, 25.)

740. SIGNALS of the sea are not of modern date, although

it is in modern times that they have been digested into a copious language, for some purposes of explicit, for others of ambiguous speech. Before the time of the forsaken Ariadne, many a vessel was distinguished by her sail; and signals had marked the path of commerce before her silken pinions betrayed the flying palace of the Egyptian queen. Banners have from the earliest times been exhibited as ornaments, and to proclaim the prince or commander, and for centuries to announce the nationality of the ship. We have referred to a treaty which prescribed what the flags of England and Flanders should display.

741. There are signals of pomp and pride, and signals of compliment, salutation, and respect, public and secret signals for guiding the fleet and directing the order of the fight. There are others with which the simple mariner is more concerned. The brave banner and the gaudy sail avail not in danger, in the gloom of the fog, or in the darkness of the night. In such conditions he must resort to the horn and the shout, to the bell and the gong, to every available sound which can be well understood; to the rocket, to the protean, the intermittent, the many-coloured light, and to the cannon's broad lightnings and tremendous roar.

742. LIGHTS.—The Admiralty was empowered by the Merchant Shipping Act to prescribe regulations for the exhibition of lights and the use of fog signals, which were to be published in the 'London Gazette,' and obeyed by the owners and masters of ships, under penalties and subject to the imputation of fault in case of accident arising from the neglect. (1 M. S. A. 295.) Under this authority regulations were published, on the 1st of October, 1858, which will be found in Swabey's Reports. Although that section of the Act, and sections 298 and 299 are repealed as from the 1st of June, 1863, the regulations are in substance comprised among those prescribed by the last Merchant Shipping Act. 3 M. S. A. 25.

743. From the 1st of June, 1863, subject to annulment, modification, addition, or substitution, by Order in Council, on the joint recommendation of the Admiralty and Board of Trade, the following and no other lights or fog-signals are to be exhibited or used, under the penalty of a misdemeanor and being deemed guilty of wilful default in case of collision, unless it be shown that circumstances rendered a departure from the regulations necessary. 3 M. S. A. 25, 26, 27, and sched. C.

A steamer under sail and not under steam is to be considered a sailing-ship; if under steam, whether under sail or not, she is to be considered a steam-ship. The lights, after mentioned, and no others, must be carried in all weathers *between sunset and sunrise*. 3 M. S. A.

SEA-GOING STEAM-SHIPS, when under weigh, must carry—

*At the foremast-head, a bright white light*, so fixed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the ship, viz. from right ahead to two points abaft the beam on either side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.

*On the starboard side, a green light*, so constructed as to throw a uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night with a clear atmosphere, at a distance of at least two miles.

*On the port side, a red light*, so constructed as to show a uniform unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark

night, with a clear atmosphere, at a distance of at least two miles.

The said green and red side-lights must be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

*Towing.*—Steam ships, when towing other ships, must carry *two bright white masthead lights vertically*, in addition to their side-lights, so as to distinguish them from other steam-ships; each of these masthead lights must be of the same construction and character as the masthead lights which other steam-ships are required to carry.

*SAILING-SHIPS*, under weigh or being towed, must carry the *same lights as steam-vessels* under weigh, with the *exception of the white masthead lights*, which they must never carry.

*Bad weather.*—Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights must be kept on deck on their respective sides of the vessel, ready for instant exhibition; and must, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light may not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, they must each be painted outside with the colour of the light they respectively contain, and must be provided with suitable screens.

*At Anchor.*—Ships, whether steam-ships or sailing-ships, when at anchor in roadsteads or fairways, must between sunrise and sunset exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all round the horizon, and at a distance of at least one mile.

*Sailing pilot vessels* must not carry the lights required for other sailing-vessels, but must carry a white light at the masthead, visible all round the horizon; and must also exhibit a flare-up light every fifteen minutes.

*Open fishing boats* and other open boats are not required to carry the side-lights required for other vessels, but must, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels, such lantern must be exhibited in sufficient time to prevent collision, so that the green light must not be seen on the port side, nor the red light on the starboard side.

*Fishing vessels* and open boats, when at anchor or attached to their nets and stationary, must exhibit a *bright white light*.

Fishing vessels and open boats must, however, not be prevented from using a flare-up in addition, if considered expedient.

**FOG-SIGNALS.**—Whenever there is a fog, whether by day or night, the fog signals described below must be carried and used, and must be sounded at least every five minutes.  
3 M. S. A.

Steam-ships under weigh must use a steam-whistle placed before the funnel not less than eight feet from the deck.

Sailing-ships under weigh must use a fog-horn.

Steam-ships and sailing-ships when not under weigh must use a bell. [This was not in the Admiralty Orders.]

The Admiralty orders which expired on the 3rd of June had prescribed to sailing ships under weigh on the starboard tack the use of a fog-horn, and to those on the port tack the use of a bell.

744. Irrespective of the positive ordinations of her country, or of that in the waters of which she is floating, when fog or darkness obscures the sky, every vessel is bound by the law maritime to exhibit proper lights and to make pro-



per signals,—whether close-hauled or free, whether lying-o fishing, or at anchor, whether entitled to hold her course or to be carefully avoided, whether in tow, or independent on the sea, or in the river,—that others may see where she is and what she is doing, and be able to escape from her impulse or to steer safely by her. The omission is less excusable when she is in an area much frequented, or she sees another vessel approaching. Eclipse and Saxonia. City of London. Unity.

745. When there is no reasonable ground for apprehension, the absence of the light is excusable. A barge lying in a river was held excused in not exhibiting a light as soon as she saw on her port-bow the red light of a steamer a mile off and not then approaching. (Ceres.) A foreign ship on the open sea was held excusable in not exhibiting a light on perceiving one which she believed to be on the shore, and could not distinguish as the light of a vessel until the steamer which bore it was close upon her. Clyde.

746. But when it is required by positive enactment she must obey; she must carry her luminous signals although they pale in the moonshine and there is not a sail within the horizon. City of London.

747. And the lights must be in good condition so as to burn brightly. Swanland.

748. And they must be exhibited in the proper place. The Admiralty regulations not specifying at which masthead the light was to be exhibited, it was held that it might be mounted on either; but that it must be at the top, and of the topgallant mast when one was standing. (Telegraph.) A three-coloured light at the bowsprit of a sailing-vessel was held not to be a compliance with the legal requisition. (Mangenta. Urania.) The position of the lights is now prescribed (see sec. 743).

749. Fishing-boats were not required by the Admiralty regulations to carry lights; it was held that the observance of the usage to show a light in the presence of danger was

requisite and sufficient. *Good Intent v. Napoleon. Olivia.* Their duties in this respect are specified in a former section (743).

750. A vessel sailing in a fog is bound to blow the fog-horn as soon as she sees or has intimation of another vessel with which she might come into collision. *Milan. Carron. Pursuit v. Carron.*

751. LOOK-OUT.—The utility of these signals is in indicating what ships there are, their character and state, what they are doing, and in what courses they are careering, when darkness or fog preclude the observance of their situation and course. But they are valueless unless other vessels keep a good look-out. It is a duty incumbent on every ship, according to her size, complement, and speed; according to the part of the water in which she is sailing, especially where there are many on different courses; according to the obscurity of the night or the day, according to the rocks and the shoals, and the winds and the currents, for her own sake and for the safety of others, to keep a good look-out. If she omit this, she is liable for the mischief she may occasion.

752. When she is about to throw herself out of command, to put herself in stays, to go about, or to anchor, it is peculiarly necessary for her to look carefully around to see that there is no danger of any vessel running foul of her while in that helpless condition. *Sea Nymph.*

753. Nor will the prudent mariner rely on all these precautions to encounter unnecessarily the dangers of the fog. When the fog is dense, especially where the waters are crowded with shipping, in the rivers or the estuaries, when it is difficult to discover their whereabouts or the directions of the banks, the channels, and the shoals, and all are liable to the indiscretion of others, the cautious mariner will not move his vessel from her dock, her known moorings, or other place of security, to grope among the bewildered shipping his perilous way. *Orion. Corinthian.*

754. CONDUCT.—In this respect some distinctions arise,—first, between the internal and external affairs of the ship ; secondly, between the conduct of ships towards each other on the open sea and their conduct within the presidial line ; and, thirdly, between the conduct towards each other of ships of the same nation and those of different states on the open sea or within any presidial limits.

755. The rights, regulations, and conduct of the officers, crew, and passengers, of all on board a ship, as among themselves, at least as to all people of the same nation, are entirely regulated by her national municipal law, the law of the country of which she is a floating part. This subject does not belong to the present work, or constitute a part of the rights of navigation. It may be sufficient to state that in Britain, and indeed in almost all countries, crimes committed on shipboard, and rights and liabilities acquired and incurred there, are chastised, protected, and enforced by the same measure of punishment, remedy, and means, as if committed, acquired, or incurred within the terrene dominions of the state. In England, some of these matters are subject to the peculiar jurisdiction of the Admiralty tribunals, and many of them are to a considerable extent regulated by the Merchant Shipping Acts to which we refer.

756. Whenever an equal right exists, each must abstain from encroachment on that of others, and must so exercise his own as to take only his proportionate share of the benefit, and to occupy even the necessary portion of the common space for only a reasonable time ; and so to take that share, and so to occupy that space, as neither wilfully or negligently to interfere with others, or to injure any other in an equally regulated exercise of his right. The law of nations, and of every particular society and state, requires compensation to be made for the infliction of injury, either through negligence or design, and superadds punishment when the injury is malicious.

757. Each ship is for a reasonable time entitled to the

exclusive possession of the water on which she is seated, and to require every other vessel to respect her indicated course. But two or more may have occasion to occupy successively a particular space, or the intended courses of two or more may meet or cross; the possessor of the desired space is bound to relinquish it for the benefit of the next in order, as soon as he can consistently with the purpose for which it is required; and the right of each of those whose courses might interfere is by their equality so modified, that each must swerve and depart from her intended way so far as may be necessary to enable both to partake as fully as possible of the right which neither can absolutely and exclusively enjoy.

758. It is obvious that national distinctions cannot affect these rules; the danger of collision is unaffected by the character of the ships; it can only be avoided by the ships of all nations acting on a common uniform law. The ascertainment of the measures best calculated to obviate such dangers is like the ascertainment and indication of sunken rocks, shoals, and other evitable dangers of the sea. It is matter of international interest, on which nations are for the most part agreed, and should endeavour on all points to agree.

759. The conduct of ships towards each other on the open sea, whether of different nations or of the same nation, ought to be, and generally is, governed by the law of the sea,—the general law of nations; and the rights and liabilities arising between them ought always to be, and generally are, regulated and enforced in accordance with that law.

760. We have already observed that it is the duty of every state to abstain from legislation inconsistent with that law. It is proper that each nation should provide tribunals and other means for its enforcement, but even the alteration, modification, or exposition of that law, where the accepted rule is found inconvenient or obscure, should be by the common consent and convention of all the nations concerned in its observance.

761. But neither the mariners nor the other subjects of a nation, nor even its highest tribunals, can disobey or abstain from enforcing any clearly expressed act of its legislature, however inconsistent it may be with the law of the sea. The responsibility for its infraction by the act of legislation, and for its violation by obedience to such acts, rests on the sovereign of the offending state.

762. Such obligation of obedience to his own law does not, however, protect the mariner or his ship in a foreign court from responsibility for disobeying the law of the sea as accepted by that court, at least in his relations to a vessel of that or perhaps another foreign country, although it may excuse him for such conduct in relation to another ship of his own.

763. The safest course of conduct for the mariner is to act in conformity with the law of the sea as accepted by his own nation, and with the express law of his own land; when that is silent, in conformity with the law of the sea as accepted by the nation of the ship with which he is in communication or involved, and any express ordinances of the country to which she belongs; and in the absence of any such exposition or ordination, in conformity with the law of the sea. It is not often that difficulty will arise.

764. Inasmuch as it is the common object of governments to secure the welfare of their own people on the sea, and it is essential for that purpose that there should be a general conformity in the management of the ships in their courses, and the comity of nations induces a desire to concur in whatever is necessary for avoiding common danger, the mariner, in the absence of contrary information, may reasonably presume that all nations familiar with navigation adopt nearly the same rules, although in some instances they do not agree.

765. So far, then, as the municipal laws of any country are express, they may be regarded as in no small degree similar; and where those of any one nation are silent, its

tribunals are likely to be influenced by the accepted regulations of other countries, and sometimes induced to adopt them as springing from the sources out of which their own maritime jurisprudence arose. Other common regulations have been established by conventions, to which we shall occasionally refer.

766. The Merchant Shipping Amendment Act, 1862, has authorized the British Executive to enter into conventions with the Government of any foreign country for the application of all or any of the regulations and provisions of that Act for preventing collision to the ships of such foreign country on the open sea; and in case of such convention, the provisions of that Act are to be applied to the ships of the confederate nation, as well beyond as within the limits of British jurisdiction, on the promulgation of an Order in Council, which may introduce conditions, qualifications, and limits of time, and may be altered or revoked. The ships of such foreign country are thereupon to be treated in such respects as if they were British ships. The Order is to be published in the 'London Gazette,' of which a copy is evidence. 3 M. S. A. 58, 61, 62, 63.

767. In the absence of such conventions, and except as to parties to them, the Merchant Shipping Acts of this kingdom, like other municipal laws, abstain from attempting to impose any obligation on foreigners beyond the limits of the national waters, except such as they may become subject to by seeking the benefit of such laws, or of intercourse with the land,—benefits which they cannot expect to obtain without submitting to the conditions on which they are conferred.

768. Such Acts can, of course, confer benefits and rights and impose obligations on foreigners who avail themselves of the use of the waters, ports, and harbours of the legislating state, inasmuch as, except where excluded by contract, it has the same jurisdiction over its marine territory as on its shore.

769. Conforming itself to these principles, the English

Legislature has, by its mercantile laws, conferred rights and benefits, and imposed obligations and liabilities, some conditional and others absolute, on foreigners who come in contact with its own subjects on the surface of its own waters, and even, in some cases, on the margin of the open sea.

770. As between the ships of two nations (such as a foreign ship and a British) on the open sea, the municipal law of neither country prevails, unless the municipal laws of both countries are the same, or unless the law of one of the countries is sanctioned by a convention with the other.

771. As between two ships of the same country, the law of their country governs their conduct and liability in whatever country it is administered. But the court of a different country, in the absence of evidence of what that law is, must judge them by the law of the sea; consequently, the provisions as to the course of sailing (1 M. S. A. 296) do not apply in a collision between a foreign and a British ship, whichever may be the offender on the open sea. They are bound by the law maritime, the law of the sea. *Dumfries. Zollverein. Chancellor. Eclipse and Saxonia. Wild Ranger. Elizabeth. Cope v. Doherty. Earl of Auckland.*

772. A foreign vessel which has entered into the business of acting as a passenger steam-ship from one British port to another British port, has made herself, as it were, a denizen of Britain, and is liable to the British laws as to collision on such parts of the open sea as she may traverse in her passage. 1 M. S. A. part iv.

773. With reference to foreign ships navigating narrow straits which connect one portion of the ocean with another, such as the Solent, between the Isle of Wight and the coast of Hampshire, or the Bristol Channel, although it, or portions of it, may be, for municipal purposes, within a district or county of the same kingdom, the whole of the area must be regarded as part of the open sea. Foreign ships have, in time of peace, the right of sailing over the whole surface free from the municipal law of the country to which the

waters belong. On this principle, two foreign ships in the Solent were held unaffected in Britain by the provisions of the Merchant Shipping Act as to collision. *Wild Ranger*. *Saxonia*. *Ida*.

774. But it is competent for the country to which such strait belongs, as to so much of the area as lies within the presidial line or lines, to make express regulations for the conduct of foreign ships.

775. The regulations of the Merchant Shipping Acts for preventing collision, and such others as may at the time be in force under it, with all its provisions relating to such regulations or otherwise relating to collision, are applied to foreign vessels within British waters; and foreign ships, as to such regulations, with reference to occurrences within British jurisdiction, are to be treated by the British courts of justice as British ships. 8 M. S. A. 57.

776. A foreign ship was held liable, under 1 M. S. A. 388, for damage done to a British ship within British waters. *Annapolis*.

777. **RULE OF THE ROAD.**—The courses in which ships ought to travel may be called the rule of the road. It is of great importance to the safety of navigation that with all nations it should be the same. The law maritime has, to a great extent, settled it on the open sea; local usages have fixed, or attempted to fix, it in particular places. The municipal laws of some countries, and among them Britain, have attempted to fix it in the national waters. Wherever a positive law prevails, all within its jurisdiction and its directions must obey. The law of the sea and local usages must yield to that positive law. It is most desirable that the rule of the road should be uniform; and it is most important that, except when attended with imminent danger, it should be obeyed. It must be observed whenever it is practicable. *La Plata*.

778. A foreign vessel is bound to obey the lawful course of navigation customary in the waters she navigates (*Fye-*



nord), whether that course is founded on custom or on positive law.

779. We shall endeavour to teach the vessels, according to the best of our ability, what are their duties ; how they are to behave towards each other in traversing the sea ; and to distinguish those of positive enactment by reference to the British Mercantile Code, in the manner already indicated, and by reference to any other municipal laws. Mercantile codes, in making particular rules for sailing, do not exonerate the ship, her owner, her master, or crew, from the consequence of any neglect to carry lights or signals, or of any neglect of keeping a proper look-out, or of the neglect of any precaution required by the ordinary practice of seamen, or by the circumstances of the case. This principle is enunciated in the English law. 3 M. S. A. 20.

780. It is desirable to preface the directions as to the courses which ships are bound to pursue by the definition of a few terms of frequent occurrence, and to point out some preliminary precautions.

*Free*, or with the wind free.—A ship is free when she has such command of the wind as to be able to regulate and vary her course.

A steamer, when unincumbered, being capable of regulating her course without the aid of, or in defiance of, ordinary wind, is regarded as free ; but she is not free when she has a vessel in tow. Arthur. Kingston by Sea.

*Close-hauled* is a general expression indicating that the ship is sailing so near upon the wind, that she would incur the danger of losing her command if she went nearer ; not hauled so close upon the wind that she cannot go nearer. (Chadwick v. City of Dublin. Halcyon.) Some vessels can sail nearer the wind than others, in general within about six points. In this position her sails are extended sideways.

*In Stays*.—A ship is in stays when she is unable to make the wind available for her progress. To stay her is to

arrange the sails and move the rudder so as to bring her head to the direction of the wind, in order to get her on a new tack ; and she is said to miss stays when her head will not come in that direction.

*In Irons.*—A vessel is in irons when, by reason of the position into which her sails have been brought, her bad condition, or any other embarrassment, she is unable to obey her helm.

*Command.*—A vessel is in command when she is ready to do her duty, and she is bound to maintain herself in that condition as much as practicable, especially when in the track of other vessels. Whenever there is greater danger, as in fog or darkness, this obligation is more imperative. *Orion. Corinthian.*

*Give Way.*—We use this expression instead of (3 M. S. A.) “keep out of the way of another in the best practicable manner, whether by starboarding or porting, by dropping astern, by slacking speed, stopping, reversing the engines, or any other convenient method.” Attempting to cross under the bows of another vessel is not giving way to her. 3 M. S. A. 15. *Dumfries. Vestal.*

*Meeting.*—Is used with reference to two vessels advancing so as to meet end on, or nearly end on ; that is, in such directions towards each other, that if each continued her course they would be in danger of striking each other's bows, or passing so near side by side as to strike or become entangled. 3 M. S. A., art. 11. *Chancellor. Maddox v. Fisher. Inflexible.*

781. *STEAMER.*—A steamer under canvas only, her sails spread, her engines inactive, is to be treated as an ordinary sailing-vessel. She is regarded as a steamer when her engines are in action, whether her sails are furled or spread. In that state she is, in law, free, as her course is controlled by her engines ; in that condition she is bound to give way in all respects as a sailing-vessel with the wind free. 1 M. S. A. 296. *Madox v. Fisher. Independence.*

782. But a steamer towing another vessel is not only not free as to the wind, but is in a position of greater danger than a sailing-ship unencumbered; she, with the vessel in tow, must be regarded as one long ship, and avoided as such. The statute prescribes a peculiar night-signal (743). In the daytime, if the vessel in tow is under bare poles, it is of course sufficiently obvious that she is drawn by the steamer; but if she is under sail, one or both ought to exhibit some unmistakable sign of being linked together, and affected by their reciprocal movements. Cleason. Emperor. Duke of Sussex. Ticonderoga.

783. When towing a ship under sail, the steamer is controlled by the sailer, and through her movements affected by the wind. The sailer is bound to observe the directions of the statute, as if unconnected with the steamer. (1 M. S. A. 297.) Their movements must correspond. So when the sails of the vessel in tow are furled, she must obey the movements, and be regarded as a prolongation of the steamer. They crawl, like the serpent of Midgard, over the waters; beware of the lofty crest, and beware of the submerged spine.

784. Under all circumstances the steamer must act with caution; her responsibility is measured by her power to injure, and the control which she possesses over that power. She must cautiously observe the precise course and progress of every vessel likely to cross or wander into her path, especially the close-hauled and the helpless; she must slacken her speed, and stop, and back, and exert every faculty, and employ every manœuvre to avoid the injury her tremendous impulse would cause. When she intends to bring-up, and the more so when she intends to veer round, to anchor, she must, like a sailer throwing herself out of command, survey well her intended situation, approach gently, and take possession of it with care. James Watt. Imperador. Ceres.

785. An unencumbered steamer must give way when she and a sailing-ship are proceeding in such directions as to

involve risk of collision. She must slacken her speed or stop, or, if necessary, reverse her course. The language of the Act is (3 M. S. A., art. 15),—"If two ships, one of which is a sailing-ship, and the other a steam-ship, are proceeding in such directions as to involve risk of collision, the steam-ship shall keep out of the way of the sailing-ship."

786. A vessel which, by signal or other indication, directs another to pursue a particular course, thereby intimates that she has the power, and is sufficiently under command to perform the evolution accordant with the course which she directs the other to pursue, and is, under ordinary circumstances, responsible for the consequences. *Carolus. Ulster.*

787. A vessel is not excused the non-performance of one duty because she is occupied in another, which she ought to have previously performed; she is not excused an omission to port in due time because she is reefing her sails, to establish that state of command in which she ought to have maintained herself. *Blenheim.*

788. As a vessel in going about is not under command, she is not bound to place herself in that predicament, except when necessary; hence the privileges of the vessel close-hauled. And when she has occasion to go about, she must observe the utmost caution, and keep a sufficient look-out and observation to see that the manœuvre does not expose herself or others to danger. *Chadwick v. Dublin. Clarence.*

789. When it is the duty of one vessel to give way, it is the duty of the other to keep her course. The words of the Act (3 M. S. A., art. 18) are—"Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the 19th Article." This article refers to imminent danger, and will be found in a subsequent page.

790. **SPEED.**—In the open sea, in the broad light of day, when there are no ships in danger, and she is safe from the

storm and the tempest, the sailer may spread wide her canvas, and the steamer may strain the strength of her engines. They may race, like the Wild Pigeon, the John Gilpin, the Flying Fish, and the Trade-Wind, from New York to California. (See Maury, Physical Geography, 338.) They may lay on their speed; they may tack; they may double; they may try all their skill, all their canvas, and every manœuvre. But whenever there is danger, or the suspicion of danger, they must be held well in command. In the fog and the haze, and the darkness of night, sail slowly and cautiously, and watch well the lights and the signals. Remember the narrow passages, and the rivers frequented by all descriptions of ships; remember the fishing-grounds, and the bays where vessels may lie at anchor. Travel cautiously and slowly in those regions. You may not damage the ships or the boats or the nets with impunity. Sail not in such places in darkness at ten knots an hour, or so fast as not to see the lights of the fishing-boats in time to avoid them. You may not travel even at the full speed allowed by the regulations of a river, if while you are travelling such speed is attended with danger. (Orion. Corinthian. Prince of Wales. Leander. Virgil. Despatch. Pepperrell. Batavier.) The Act (3 M. S. A., art. 16) is as follows:—"Every steam-ship when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam-ship shall, when in a fog, go at a moderate speed." It matters not what contract she bears, whether for private or public (even the Mail) service, she is not by such contract, however stringent, justified in exposing others to peril. Vivid.

791. SHIPS MEETING.—When two vessels are proceeding in such directions as to meet if their courses are continued—

If both have the wind free, both must port. The Act omits the qualification, and is in these words (3 M. S. A., art. 11):—"If two sailing-ships are meeting end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other."

792. If both are steamers, both must port. The words are (3 M. S. A., art. 13) :—"If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port-side of the other."

But article 19 introduces this qualification (3 M. S. A., art. 19) :—"In obeying and construing these rules, due regard must be had to all dangers of navigation, and due regard must also be had to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger."

793. CROSSING.—Two sailing-ships proceeding in such directions as to cross each other's path, and to incur risk of collision if their courses were continued :—

If both have the wind on the same side, or if one has the wind aft, the windward vessel gives way. (3 M. S. A., art. 12.) If they have the wind on different sides, she who has the wind on the port-side, if free, gives way ; if she is close-hauled, and the other free, she keeps her course, and the free ship gives way. 3 M. S. A., art. 12.

Of two steamers under any of those circumstances, she who has the other on her own starboard-side gives way. (3 M. S. A., art. 14.) The language of the Act is (3 M. S. A., art. 12) :—"When two sailing-ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port-side shall keep out of the way of the ship with the wind on the starboard-side, except in the case in which the ship with the wind on the port-side is close-hauled, and the other ship free, in which case the latter ship shall keep out of the way ; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward." Article 14 :—"If two ships under steam are crossing so as to involve risk of collision, the ship which has the other

on her own starboard-side shall keep out of the way of the other."

794. OVERTAKING.—Any ship overtaking another must give way to her. The words of the Act (3 M. S. A., art. 17) are :—"Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel." If a vessel ahead indicates her intention to take a particular course, a vessel coming behind her must assume that she is able to, and will take that course, and perform any necessary evolution, until she shall have unmistakably shown that she is incapable of taking it, or has changed her intention. Ulster.

795. PECULIAR MODE OF NAVIGATING.—Whoever enters upon any peculiar or unusual mode of navigating or conducting his ship, involving danger to others, is responsible for the consequences. Hope.

796. The directions contained in the Act as to sailing are obligatory upon all British vessels with reference to each other. (3 M. S. A., art. 58.) The qualification contained in the 19th article will apply to their conduct with regard to foreign vessels, in any case in which the sailing directions may vary from the general rules of the sea, or from any particular law which a foreign vessel may be bound to observe. It would also apply to any embarrassment which might arise between British vessels, in case of either being mistaken for a foreigner, and the mistake leading to the observance of a different rule. Araxes.

797. As a general rule, a vessel which has the wind free must give way to one close-hauled. No vessel is unnecessarily to put herself out of command. Chancellor. Sally. Eclipse and Saxonia.

798. When both vessels are close-hauled, she on the starboard tack keeps her course, she on the port tack gives way. Tecla Carmen. North American. Hope v. Jacob. Seringapatam. Flint. Mary Stuart.

799. In broad daylight, or a clear night, there is little

difficulty in observing the courses of other ships; the difficulty is in darkness, when their direction can be gathered only from the appearance and movement of the lights. But it is difficult to lay down any specific rules, and each case which has been decided is so much affected by distance, suddenness of appearance, and the conduct of the parties in each of the ships, as to afford little assistance for the consideration of any other case.

800. **NARROW CHANNEL.**—A steamer navigating a narrow channel was required, so far as practicable and consistent with safety, to keep that side of the fairway or mid-channel as lay on her starboard. (1 M. S. A., 297. *Panther*.) It was decided that while keeping on that side of the fairway she was bound to observe the prescribed rule with reference to any vessel coming in an opposite direction. (*Smith v. Vass.*) That section has been repealed. 3 M. S. A. 4.

801. **TIME.**—A vessel seeing another approaching in such a direction as to meet her must obey the rules as to porting, whenever and as soon as it is necessary to avoid any probability of danger (*Viking. Panther*), whenever there is any reasonable doubt. (*Rob Roy. Union v. Panther*.) A steamer seeing a sailing-vessel approaching two points on the starboard bow was held bound to port. (*Beehive. Cleopatra*.) A ship seeing the red light three points on the starboard bow was held bound to port. (*Mangerton. Sylph*.) But a ship is not bound to port immediately on seeing another a long way off, or so long as she sees the green light of another broad (three or four points) on her starboard bow. (*Emma. Ericson. Bothnia*.) And ships are not bound to port while it is manifest that they may pass with safety, keeping their courses. *Colne. Inflexible*.

802. If the ship, from her improper condition, or the mismanagement of her master or crew, will not obey the helm in due time, she is responsible for the consequences; but she is not responsible for an injury arising from the helm being in such a state that it cannot be ported, or from her incapacity



city to obey it, if such condition is produced by an inevitable accident, or by circumstances over which her owners and master have no control. *Blenheim*.

803. DEPARTURE FROM RULES. — The supreme law of the sea, to which every rule is subordinate, allows the ship at all hazards to avoid destruction, to save herself; the next law in order is, that she inflict no injury, or as little as possible, on others. The rules prescribed by the maritime and municipal laws are alike addressed to these purposes, but not applicable to every emergency. When, from any cause whatever, a course different from that prescribed by the legislature is necessary to avoid instant collision, or to diminish the violence of the shock, it is the duty of the mariner to adopt it, although his own previous omission to observe the prescribed rule had brought the vessels into the dangerous predicament. It is obvious that he who pleads such necessity as an excuse for not obeying the law must maintain that plea by satisfactory evidence. (*Orion*. *Medora*. *Eden*. *Superior*. *Glanmore*.) If the second breach of the rule should obviate or alleviate the injury, which the first, if persisted in, would have occasioned, the offender has the advantage; inasmuch as he is liable only to the extent of the danger actually occasioned. Provision is made for deviation from the rules by 3 M. S. A., art. 19 (792).

804. Although local custom or usage does not otherwise afford an excuse for disobeying the prescriptions of the legislature, yet in cases of emergency it may afford a useful rule. The one acting upon it may have occasioned the embarrassment, from which, by pursuing it, both may escape; so where the course directed by law cannot be pursued with safety, one vessel by adopting the customary course may indicate to the other the method of escape. *Medora*. *Sylph*. *Unity*. *Hand of Providence*.

805. If one of two ships approaching so as to meet is guilty of delay in porting, and the other may reasonably expect to escape immediate danger by starboarding, she is justified in the attempt. *Joseph*.

806. It is the duty of every ship in danger of collision with another, to obviate it by every proper expedient, to waive her right of way (Arthur); if small, to give way to that which is larger (La Plata). A steamer should stop her engines and reverse her course, if by such means even the violence of the impact might be diminished. Medora.

807. And when a collision has happened, it is not only the duty of the vessel which has struck another to stop and see to the safety of the stricken vessel (Despatch), but it is the duty of whichever of the vessels is most capable of doing so, to render assistance to the other. We shall mention a provision of the Merchant Shipping Act on the subject. 3 M. S. A. 33.

808. ANCHORING.—A ship coming to anchor must not take a foul berth; she must assume a proper situation, with, so far as practicable, such a space around her that she may not swing against another. She must anchor herself securely, so as not under ordinary circumstances to be drifted away. And if she should be drifted down the tide or driven by the wind across it, she must put out another anchor, and exert all her means and skill to obviate collision. Telegraph. Northampton.

809. Fishing-boats lying on their fishing-grounds are regarded as vessels at anchor (Good Intent v. Napoleon), and are not to be unnecessarily disturbed in their vocation, or forced to abandon their lines, by the passing vessels. Columbus. Good Samaritan.

810. But ships at anchor, and fishing-boats lying on their grounds, must exhibit the prescribed lights, or they become responsible for any damage which their neglect may occasion. Telegraph. James.

811. SHIP-LAUNCH.—Due notice must be given of the time and place of a ship-launch, and a proper look-out must be kept. If there is a customary notice, that should be given, and whatever further notice would be reasonably required to apprise strangers who might not be aware of the custom.

On the other hand, it is the duty of every ship navigating a river to keep a good look-out, and to pay attention to such notice, and any other information he may receive. *Blenharn. Alcock v. Doxford. Viana.*

. 812. OBSTRUCTION.—Mere obstruction may occasion injury by forcing a vessel into danger, or may only cause delay, or may occasion both damage and delay. Whoever wilfully, without lawful authority, obstructs a navigable channel, is responsible for the delay which his conduct may occasion, or the injury which it may inflict.

813. The owner of a sunken vessel, so long as he retains control over it, is bound to indicate its position by a buoy or other well-known sign. It is not sufficient that a man should shout to those who are passing near it,—they might not understand the signal. (*Brown v. Mallet. King v. Watts.*) But he is at liberty to abandon it as lost and shipwrecked, and on doing so he ceases to be accountable to society for the consequences of the common, and to him grievous, calamity. The relics become part of the common perils of the sea. *Columbus. White v. Crisp.*

. 814. PILOTS.—The institution of pilots is almost universal ; originating in many places with fishermen and wanderers in canoes volunteering such information as they could impart to the strange vessel. The requisitions of navigation have bred on almost every coast a hardy, adventurous, intelligent, and skilful race, to whom the most accomplished and experienced mariners often find it prudent to entrust their ship, their fortunes, and their lives.

815. The race of pilots having become established and useful, and being ready for service, acquire, in respect of that readiness in case of need, an imperfect right to compensation, and an inchoate title to be employed. The authorities of each locality in earlier periods instituted their own usages or bye-laws, of which they required observance by all vessels entering their ports, and reasonably required that their authorized pilots should be employed, or paid a reasonable compensation if unemployed.

816. Higher authorities gradually interfered, and ultimately in most countries the governments have interposed to determine,—in general by means of properly constituted associations, possessing great knowledge of maritime affairs, and exigencies,—the qualifications and credentials of pilots, the obligation and terms of their employment, and the extent of their authority, power, and responsibility when employed.

817. In some marine districts there are no licensed pilots, but hardy boatmen still undertake the duty of piloting ships. They however are not pilots in the view of the law. Regulations for the qualification, rules for the conduct, and laws for the government and correction of classes of men to whom so much is confided, and chosen from races naturally of a bold and wild nature, are necessarily established in all mercantile nations, and are generally to a considerable extent local. The examination of this subject is beyond the objects of the present work; we may mention that in Britain it is to a considerable extent dealt with by the general Pilotage Act, the fifth part of the Merchant Shipping Act, which is expressly confined to the United Kingdom, and the Merchant Shipping Acts Amendment Act, 1862.

818. It is necessary that the mariner should know where to find the pilot, and how to distinguish his boat from that of others, and that the names and numbers should not be concealed. 1 M. S. A. 346.

819. The British pilot boat is black, painted or tarred outside, except the names and numbers, or of such other distinguishing colour or colours as may be directed by the district pilotage authorities, with the consent of the Board of Trade.

On her stern, the name of her owner and of the port to which she belongs are painted in white letters, at least one inch broad, and three inches long, and on each bow the number of her licence.

When afloat, she bears at the masthead, or on a sprit or staff, or in some equally conspicuous situation, a flag of

large dimensions compared with her size, and of two colours, —the upper horizontal half white, the lower red.

Her master is liable to a penalty of £20 for the neglect of these characteristics, or for not keeping his flag clean, or the names and numbers exhibited. 1 M. S. A. 346.

820. The mariner navigating certain areas of the sea is compelled by the municipal law, or by local usage, to employ a licensed pilot. In other places there are pilots ready whom he may or not in his option employ.

821. In places where the employment of a pilot is as a general rule obligatory, there are various exceptions, more frequently in favour of persons presumed from their habits to be familiar with the navigation of that coast.

822. When the mariner is not under a legal obligation to employ a pilot, whether it be because he is beyond the area of the pilotage, or because he is exempted by the law from that obligation, he is of course at liberty to engage the assistance of any persons he may find possessed of the knowledge requisite to aid him in his voyage; but whether such persons are licensed pilots, or pilots by avocation only, or persons taking upon them such service occasionally, or on the particular occasion, they are employed as his servants, and he is responsible for all their neglects and misconduct during and within the scope of their authority. So when obliged to employ a pilot he is responsible for the mistakes of an interpreter or other assistant, although engaged at the pilot's request. *Peerless. Temora.*

823. But when the law imposes upon the mariner the obligation of taking a pilot, and entrusting the ship to his skill and conduct, the better rule, though nations differ as to it, seems to be that which is established in England, that inasmuch as the law having taken the control from the master, and deprived the ship of whatever benefit and security it might have derived from his personal skill and knowledge, and from the assistance of those whom he might have selected on his own responsibility, and for public reasons

put her under the management of a public officer, she is not liable for his negligence or misconduct within the scope of his duties. (Admiral Boxer. Peerless. Castor. Ticonderoga.) As to the rule in America, which seems, at least to some extent, to be different, *Basse v. Donaldson*. *Williamson v. Price*. *Yates v. Brown*. Lord John Russell.

824. This rule is not part of the common law of England, which regarded the pilot, though employed under compulsion, as the servant of the ship, and acting under the responsibility of the ship. *Peerless*. *Annapolis v. Johanna*.

825. We must then very shortly speak of the obligation to take on board a pilot; and as the relief of the ship from liability, when she is relieved, depends not only on the fact of having a licensed pilot on board, but on the injurious act being attributable to him, we must see what, under such circumstances, are the duties of the pilot, the public servant, and what are the remaining duties of the master and other servants of the vessel.

826. The obligation to take a pilot depends upon the municipal law of the country, which may arise out of general or particular customs, or out of legislative enactment. Such laws become part of the maritime law, inasmuch as their observance conduces to the general welfare of mariners of all nations. It is competent therefore to the municipal law not only to impose on foreigners visiting their waters obligations, in respect of pilots and pilotage, similar to those which it imposes on its own subjects, to be observed within the presidial limits, but also as to taking pilots on board at proper places beyond the presidial line, when about to enter the national waters.

827. For these reasons the general terms of a law requiring a vessel to take a pilot, even beyond the presidial line, for the purpose of entering the waters within it, will be construed to include foreign as well as national vessels. *Annapolis*.

828. And general terms of exemption, applicable alike to English and foreigners, will comprise the foreign vessel. *Vernon. General Screw Colliery Company v. Schurmann. Ann v. Presto. Annapolis v. Johanna. Maria.*


829. Whether the collision be between two foreign ships, or between an English ship impugnant against a foreign ship, or a foreign ship impugnant against an English ship, or between two British ships, the law as to the obligation to take, or exemption from taking, a pilot on board, and as to the non-liability of the ship for the misconduct or unskilfulness of the pilot, is the same. *Atlas.*

830. The exemptions from the obligation are peculiar, and granted by the laws of each country ; some are local, and conceded by the local law. We cannot describe them here, but we mention one or two ; premising that the existence of a power to license pilots in a particular locality does not render pilotage compulsory. *Killarney.*

831. In England vessels within the ports to which they belong are, with some exceptions, exempted from compulsory pilotage. (6 Geo. IV. c. 125, s. 59.) So are British ships coming from a port north of Boulogne, carrying passengers within the Thames. The expression, "ships trading to any place in Europe north of Boulogne" (1 M. S. A. 379), comprises the inward as well as the outward voyage. Indeed, it is the description of the ship, not of the particular voyage. We may add that the then existing exemptions were continued by 1 M. S. A. 353, 354. *Stettin. Killarney. R. v. Stanton. Temora. Earl of Auckland. Wesley.*

832. The pilotage authority can, with the consent of the Queen in Council, create or extend an exemption from compulsory pilotage (1 M. S. A. 332), but cannot create a new penal obligation. *Earl of Auckland.*

833. The "certificate granted to the master" under 1 M. S. A. 340, 343, must have been actually delivered to him, to exempt him from compulsory pilotage ; it is not sufficient that it was ready for him had he called for it. *Killarney.*



834. The power of the Board of Trade to grant certificates to masters and mates is limited to certain ships (1 M. S. A. 354, 355), and to be valid, must describe the person who is the owner at the time when it is granted. *Earl of Auckland*.

835. THE PILOT'S DUTY is to guide the ship through the waters in safety to herself and others, and therefore to possess proper skill for that purpose. The licensed pilot is presumed, from examination and attested qualifications, to possess that skill, and to be a person who will duly employ it. The ship which engages him under compulsion is therefore not liable for his incompetency or want of skill. (*Lucy v. Ingham*. Fama.) If he find on board a crew which will not work her, he should not proceed. (*Taylor v. Harrison*.) He has authority, in case of need, to employ a steamer to tow the vessel under his charge. (*Reilley v. Scott*.) And it is his duty to select a proper anchorage (George), and so to anchor, if provided with the proper means, as to prevent the vessel drifting, or swinging against any other ship. *Mactaggart v. Williams*.

836. When the law requires the mariner to employ a pilot, it is the duty of the master, whether of a steamer or of a sailing-vessel, to heave-to in good time to receive him; the ship is responsible for any damage which may arise to the pilot-boat from neglect of such duty. (*Badger v. Kielmansegge*.) It is not within the compass of this work to discuss the liability to penalties, or the rates of pilotage which the ship may incur for not employing, or as a compensation for the services of the pilot.

837. After a pilot has been taken on board, the master, officers, and crew remain liable to the performance of all their duties as before, except such as fall within the province of the pilot. It is the duty of the ship to be in proper condition, with all requisite means for sailing, avoiding danger, and coming to anchor. (*Baron Osy. Rubicon*. *Jackson v. Thompson*.) And it is the duty of the master



to keep a proper look-out (Batavier), to cut away encumbering gear, and otherwise provide for the condition of his ship, and on emergency, to do whatever is necessary to avoid collision without awaiting the pilot's command.

838. The master is not divested of all discretion. He must not interfere with the pilot in any matters which fall within his province, except under urgent necessity, such as intoxication, manifest incapacity, or a danger which the pilot does not observe. (*Hammond v. Roper. Peerless. Christiana.*) It is his duty to obey the order of the pilot within his office, and when requisite to repeat and enforce it (*Julia*); even though it be a direction to steer in contravention of the statute, as in taking a steamer to the port-side of a narrow channel, contrary to 1 M. S. A. 297, for the pilot may be aware of the necessity of so doing. (*Argo*.) It would be proper for the master to call the pilot's attention to the requisition of the law, if apprehensive of infringement; but his omission to do so would not render the ship responsible for the pilot's failure in duty.

839. Until the pilot is in actual charge of the ship, and afterwards while he has left that charge, even temporarily, as to go below, the ship is liable for the neglect by the master, or any of the crew, even of the functions which belong to the pilot. (*Mobile*.) And even after the pilot is on board, if the master employ a tug to remove the ship from one dock to another, she remains in his charge, and the ship is responsible. *Borussia*.

840. ACCIDENTS are evitable or inevitable, innocent or attended with fault. To avoid circumlocutory phrases in speaking of collision, we designate the offending vessel the impugnant; the other, if implicated in the offence, the opugnant; if innocent, the aggressed. It is immaterial which vessel struck the other (*James Watt*); she, whose conduct caused the concussion, is the impugnant, the offender.

841. INEVITABLE.—The ship has to encounter the storm and the tempest, the rocks and the shoals and the reefs, the

sweeping currents, and the yawning and raging of the sea. She may be hurled on the wild coast, or engulfed in the absorbing wave. Against the ocean she pleads in vain; in its bottom her ruins and her precious cargo lie strewed. They who owned her may reclaim what they can by the diving-bell, and all the ingenuity of machines. But against the wrack of the storm and the billow there is no redress. Nor, if they dash ship against ship, are the helpless instruments of their fury responsible to each other. In the whirl of the winds, and in the rushing of the waters, each must strive to save herself; each by her own efforts may be saved, but they are helpless to aid one another. Each must strain her strength and exercise her skill—first, for self-preservation; secondly, to avoid crushing her companion in distress. If no reasonable care was wanting to fit her and to man her, and to provide her with intelligence adequate to ordinary occasions, and if her capacities were put to the proof in constitution and skill, and, in spite of her efforts, the winds or the waves make her the innocent instrument of destruction, the accident is inevitable; against her there is no reclamation,—she has done no wrong.

“What dreadful noise of water in mine ears!  
 What sights of ugly death within mine eyes!  
 Methought I saw a thousand fearful wrecks;  
 A thousand men that fishes gnawed upon;  
 Wedges of gold, great anchors, heaps of pearl,  
 Inestimable stones, unvalued jewels,  
 All scattered in the bottom of the sea.”—*Richard III.*

842. When there is no fault in either, when the accident is inevitable, when it has arisen wholly from the perils and dangers of the sea, neither is responsible to the other, or to any one, except under special contracts, with which we are not concerned. Each must bear the calamity which falls upon her under the irresistible laws of nature.

843. Some jurists, either through a notion that there must have been fault somewhere, although it cannot be discovered;

or that, by imposing a rigorous responsibility, greater caution may be induced; or through a notion that the loss by a common calamity should be borne rateably among all involved, have considered that in every case of collision which wears the appearance of an inevitable accident, the loss should be endured equally among the sufferers. This seems to have been the principle of the ordinances of Wisby, and the laws of Oleron, and several European nations. But this doctrine does not now, at least extensively, prevail. When the accident is inevitable, each vessel has to bear her own damage, although it arise from one of the vessels extricating herself from danger. *Vernon. Shannon. Thornley.*

844. When a vessel is rendered incapable of obeying her helm without any default on her part, she is not responsible for damage done to another. *La Plata.*

845. EVITABLE accidents are such as might be avoided or partially obviated by adequate skill and proper precautions. The liability for such accidents, when the fault is not criminal, is on the ship and her owners, except when they are relieved from such liability by the obligation of taking a pilot.

846. When the fault is criminal, the liability rests with those who are guilty. But it must be borne in mind that the declaration in 1 M. S. A. 299, that the damage in certain cases shall be deemed to be caused by the wilful default of the person in charge of the deck, does not exempt the ship or the owner. *Seine. (551.)*

847. PRECAUTIONS.—We have already mentioned many of the necessary precautions,—the outfit, manning, and condition of the vessel; her equipment in boats, and other means of obviating, alleviating, and escaping from danger; the lights and other signals which she must provide; the look-out, care, and speed with which she should traverse the waters; the courses she must observe, and the circumstances which require deviation from their observance.

848. If she neglect any of these provisions or observances she is in fault, and for such neglect, in some instances, she

is liable to penalties, although no injury is occasioned by the omission.

849. Where injury occurs to another, she is not liable to him for such omission, if it in no manner contributed to the injury. We shall occasionally find it convenient to use the expression "injurious fault," to distinguish fault which caused or contributed to the injury. The expression, "collision occasioned by non-observance," in the Merchant Shipping Act (1 M. S. A. 298), means collision contributed to by non-observance. *Raisin v. Mitchell*. James. *Borussia*. Tuff v: Warman. Lord Saumarez.

850. In case of collision between two ships, it is the duty of the person in charge of each, so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers, such assistance as may be practicable, and as may be necessary, in order to save them from any danger caused by the collision; and if he fail to do so without reasonable excuse, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default. 3 M. S. A. 33.

851. And in case any damage to person or property arises from the non-observance by any ship of any regulation made by or in pursuance of the Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck at the time, unless it is shown that circumstances made a departure from the regulation necessary. 3 M. S. A. 28.

852. If a vessel's non-observance of any of the precautions in any degree contributed to the injury, she is in fault, and responsible,—although no skill could have obviated the collision at the moment of its occurrence. (*Virgil*. *Hibernia*. *Unity*. *Vivid*. *Telegraph*. *Fairy*. *Darrell v. General Steam Navigation Company*.) As one of many examples, it is not an excuse that the ship's chains or other furniture had accidentally got out of order, unless that accident was inevitable. *Clutha*.

853. The Merchant Shipping Act (3 M. S. A., art. 20), provides that the observance of the rules for steering and sailing shall not exonerate the ship, owner, master, or crew, from the consequences of neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or the special circumstances of the case.

854. **ADEQUACY OF SKILL** is to a considerable extent involved in the observance of those precautions which are prescribed as to the ship's exhibition and use of signals; her look-out, care, speed, and courses; and the talent with which she is kept under command, reined up, checked, and turned in her fast career; with which she is managed in the whirlwind, and controlled in the turbulence of the ocean. Possession of the ordinary skill required for the government of such a vessel by her commander, her engineers, her officers, her helmsman, and crew, is a duty she owes to the public: her deficiency in this respect is imputed to her as an offence, and for injury arising to others from that deficiency, she is responsible and bound to make compensation. But on some occasions when the dominion is taken from her by superseding in some respects her own skill, as when she is bound to receive and obey a pilot, the omissions and neglect of the officer by whom her self-control is superseded, within the scope of his avocation, are not to be imputed to her, or to her master, her owners, or crew.

855. In questions arising from the damage done by collision of one ship with another, we have to deal only with faults which in some degree contributed to the collision; all others are to be put out of consideration. For this purpose, in these cases, unless a ship is guilty of some fault which contributed to the collision, she is not in fault, whatever her omissions or commissions may have been.

856. When it is clear that there has been fault in both, but it is impossible to ascertain which is the offender in any

particular, in France and England a presumption is accepted that both were in equal fault. Abbott, 229-233.


857. When both are in fault, the rule, arising from the impossibility in general of discovering which is most in fault, is, to add together the amounts of the common losses, and divide them equally between the offenders. Such is the rule in Hamburg, Sweden, and Rotterdam, and such is the rule in France (Abbott, 229-233), and such in effect is the rule in England, if the parties resort to a court which can apply it; for that is the rule of the English Admiralty, which has dominion over both vessels, and is capable of this profound computation. The costs and expenses of both, reasonably incurred, are added to the aggregate, and equally divided, and the balance paid to the vessel which has sustained the greater loss. The amount of the aggregate thus estimated is apportioned equally against the vessels, not in proportion to their respective values. And the rule is applied among all kinds of vessels, whether sailers, steamers, foreign or British. (*De Cock v. Parmelia*. *Venerable v. London Merchant*. *City of London*. *Supplies*. *Linda*. *Arthur*. *Sylph*. *Hay v. Le Neve*. *Swanland*.) But if costs have been improperly incurred by either, the court will disallow so much of them as it thinks right in ascertaining the amount to be apportioned. *Sirius*.

858. If however the injurious fault of both ships is in disobeying the rules prescribed by the statute as to lights or other signals, or the directions for sailing, when such ships are subject to those rules, neither can recover any part of her loss in a British court. If the injurious fault of one of such ships is in such disobedience, she cannot recover, but is liable to pay half the loss which the other has sustained, and half her costs. (*Wansfell*. *Ulysses*. *Prompt*. *James*. *Aliwal*. *Aurora*.) Thus, if the omission to fix the light in the proper place contributed to the collision, the offending ship cannot recover, although she bears a light in a conspicuous station. *Whittel v. Crawford*.

859. The cargo is not involved in the liability for damage done to another ship. The owner of it is not liable to compensate the injured vessel for any portion of her losses, whether the ship which carried it was guilty or innocent. Of course, the owner of the cargo has no claim against an innocent vessel injured in the collision; but when both ships are guilty, he is entitled to recover half his loss from the other offender, although the fault of the ship which carried the goods was a breach of the statutory provisions. (Milan.) His remedy against the owner of the vessel freighted with his cargo depends on relations and contracts foreign to this treatise.

860. But the Common Law Courts of England are incapable of so much arithmetic, or of bringing the two sums together. It looks like giving damages to the defendant, who, in this process of addition and division and subtraction, might chance to be entitled to the balance. Therefore the Common Law Court holds, that if the plaintiff's vessel was guilty of injurious fault, he cannot recover; subject to some question, whether, if her fault was so slight in comparison to that of the defendant's vessel, as to leave the balance of injury greatly in his favour, he ought not to be permitted to obtain such damages as a jury, on comparison of their delinquencies and losses, might think it just to award. (Dowell v. General Steam Navigation Company. Arthur. Dodson v. Dendy. Raisin v. Mitchell.) We however advise the much injured vessel to seek refuge in the Admiralty, where her remedy is more certain.

861. To relieve the ship from liability by reason of the employment of a pilot, it is necessary to show that the injurious act was done by, or under the order of, a pilot. (Schwalbe. Admiral Boxer.) And although the injury was occasioned partly by the fault of the pilot, if the master, the crew, or the ship was also in fault, the ship is responsible. Diana. Christiana. Mobile. De Caen. Massachusetts. Batavier.



862. There are reciprocal duties between the towing steamer and her companion. The steamer is the hiring, the servant, and bound to obey, and the tow is liable for even her negligence in obedience to lawful commands. The contract of towage involves an engagement by each for the exercise of reciprocal care and caution. Although neither is responsible to the other for injury occasioned by the perils of the sea, or by the improvident act of the one, which would have been innocuous but for the improvidence of the other; yet if the damage is occasioned by the misconduct of the one, as the tow crowding too much sail, she is responsible, although no injury would have been occasioned but for the tempestuousness of the weather. Julia.

863. Although the steamer is a hiring, she is not bound to obey a command of the tow which would bring her into danger, and she is entitled to cast her companion loose when necessary for self-preservation. (Annapolis and Golden Light.) The very movement which might put her in safety might put her companion in peril. She must, when practicable, avoid such movement; but when it is impracticable otherwise to avoid the danger, she should release her companion, that each may shift for herself. Kingston-by-Sea. Arthur Gordon.

864. When towing a ship under sail, the steamer is under the government of, or controlled by, the movements of the ship she is towing, and affected by the wind and the weather. The sailer is to a great extent responsible for the movements of the steamer, but not for the steamer's particular misconduct. She is bound to observe the special directions of the law (1 M. S. A. 297) as if unconnected with the steamer. But when her sails are furled, and she has resigned herself to the guidance of the steamer, the responsibilities are reversed. In each case, each has her peculiar duty; but in the latter the steamer governs the course, the sailer must implicitly follow. Cleadon. Emperor. Duke of Sussex. Ticonderoga. Kingston-by-Sea. Arthur Gordon.



Forbes. Melampus. Helena. Unity. Hand of Providence. La Plata.

865. PRESUMPTIONS AS TO FAULT.—These are for the most part founded on rational conclusions from the state and circumstances in which the vessels are proved to have been, when there is a want of sufficient other evidence, or the evidence is in such a state of conflict as not to be entitled to consideration. Some of these presumptions have been arbitrarily established by the accepted maritime law, others by national or local customs, and others by legislative authority.

866. The following judicial presumptions may be recognized as reasonable in cases of collision:—As between two vessels entering or leaving a port, that which arrived last is guilty; she ought to have allowed the other to precede her.

Between two vessels meeting, the smaller is guilty; she ought to give way.

Between a vessel going out of harbour and one coming in, the vessel going out is guilty; she ought to give way.

The presumption is against a ship which sails at night, and of course against a ship which puts forth in a fog.

The law of France is said to have adopted these presumptions in the absence of contravening proof. Abbott, 238. Emerigon, *Traité des Assurances*, c. 12, s. 4. Pardessus, *Cours de Droit commercial*, iii. 90.

867. If a ship under weigh run into a vessel at anchor, she is presumed to be the aggressor. Peerless. Annapolis. George.

868. The Legislature of England has introduced an arbitrary but rational presumption, that either of the ships involved in a collision which neglects to afford such assistance as she can render to the other, shall be regarded, in the absence of proof to the contrary, as the aggressor. 3 M. S. A. 33 (900).

869. It must be presumed that a ship, which has in all other respects done her duty, has kept a proper look-out;

that is, such as, having regard to the state of the tide, the river, and number of shipping, her own speed, the state of the weather, darkness, fog, tempest, and other circumstances involving greater or less vigilance and caution, was reasonably sufficient to obviate danger. *Panther. Trident.*

870. It must be presumed that a steamer, which, going ten knots an hour on a clear though dark night, did not observe the light of a lantern over her starboard bow in time to avoid collision with the approaching vessel which bore it, had neglected her look-out. *Ericson.*

871. If it appear that the collision was occasioned by the non-observance of any regulation made by or in pursuance of the Act, the ship by which such regulation has been infringed is to be deemed in fault, unless it is shown that circumstances rendered the departure from the regulation necessary. (3 M. S. A. 29.) The absence of the proper lights, or their absence from the proper place, or their deficiency in brightness, warrants a presumption that the collision arose from the delinquency of the vessel. (*Juliana.*) But the brightness of the night may raise a counter-presumption against the sufficiency of the look-out. If the vessel, negligent as to her lights, was seen by the impugnant, she is excused, for in such case her negligence did not contribute to the collision. *Telegraph. Livingstone.*

872. **DAMAGE DIRECT.**—The value of the injured vessel is her market-price at the time of the accident. If the loss is total, that is allowed. The best evidence of her value is the opinion of competent persons acquainted with her before the injury; next, the opinion of persons generally conversant with shipping; the next, but inferior, her original cost and the expense of repairs. *Clyde. Ironmaster.*

873. If she is abandoned or irreparable, or the damage exceed her value, or if she is justifiably sold by her master abroad, her owner is allowed the full value, less the proceeds of the sale of what of her remained. *South Sea. Eugénie.*

874. If the injury is partial, she is allowed the value of

all things entirely lost and not replaced. A fishing-smack is allowed the value of her fish lost. (*Wanderer*.) She is allowed the expense of necessary repairs and refitting for sea, without deduction for the improvement of her condition by such repairs. (*Pactolus*. *Clyde*.) But the expense is the net amount after deducting such discount as is usually allowed on payment at the time, if the amount of damage is ready. Inflexible.

875. The damage includes the salvage expenses, to which the aggressed is subject, and the costs of an action against her to recover the salvage at least, unless the claim was exceedingly moderate; for the amount allowed in such cases is so speculative as to excuse a prudent man's making a tender. *Linda*. *Legatus*. But see *Tindall v. Bell*.

876. The damage includes towage rendered necessary by the collision, and the court will not speculate as to whether towage would probably have been incurred had the accident not happened. (Inflexible.) It also includes the expenses of her detention, and any peculiar expenses to which she was subject by necessity or usage, as on account of the detention of the officers and Lascar crew of an Indian trader. It also includes a reasonable compensation for non-employment during repair,—that is, for the profit which it may be reasonably presumed that she would have made, but not mere speculative profits. Inflexible. *Levin Lark*. *South Sea*.

877. The Admiralty gives sailors who have lost their clothes a separate right and remedy for compensation. The lost articles are generally estimated at two-thirds of their price when new. *Cumberland*.

878. DAMAGE, CONSEQUENTIAL.—The injured ship is entitled not only to compensation for the damage which she has sustained directly from the collision, but also for damage which has arisen to her from her crippled condition, rendering her less capable of escaping additional injury, as from being deserted by her crew through reasonable apprehen-

sion of their lives, or from her being driven against, and occasioning damage to, another vessel. It may be mentioned that such third vessel might seek her remedy either against the direct or original impugnant. *Blenheim. Linda. Penser. Lyra v. Venus.*

879. ACCIDENTS, NOTICE OF.—The owner is bound, under a penalty of £50, to give notice to the Board of Trade of the apprehended loss of a steam-ship. (1 M. S. A. 327.) And he is bound, under a penalty of £30, within twenty-four hours, or as soon as possible, to make a report to that Board of any accident to a steam-ship, containing the name of the ship, the port to which she belongs, and the occasion of the accident. 1 M. S. A. 327.

880. An entry of every collision must be made in the official log, and signed by the master and mate or one of the crew, under a penalty of £20. 1 M. S. A. 328.

881. LIABILITY OF SHIP AND OWNER.—On the general principle that a man is liable for the negligence and some of the defaults of his servant, to whom he has entrusted the management of any, especially a dangerous machine, which might by such negligence or fault inflict an injury upon others, the ship-owner is responsible for damage occasioned by the mismanagement of his ship. The principle is founded in reason, inasmuch as it is his duty to take care that a machine which, incautiously used, may occasion loss to others, should be entrusted only to the charge of persons possessing sufficient discretion and skill to avoid all inconveniences, which are not with reasonable care and ability inevitable.

882. It is foreign to the subject of navigating the waters to enter into the question of liability of the owners, or the masters, or crews of ships, either for criminal conduct or on their private contracts. We confine ourselves to those liabilities which the ship and her owners, as such, incur in consequence of her conduct on the waters, liabilities represented by the ship.

883. But it may be proper to repeat that the ship is not responsible for the criminal act of the master or crew in wilfully making her an instrument of mischief. Certain liabilities of a criminal character will have to be considered, under the titles of slavery, smuggling, piracy, and war.

884. The ship, then, is not responsible for the wilful, malicious act of the master beyond the scope of his authority, as in wilfully running into another vessel. *Ida. Druid. Seine.*

885. A ship is not liable for an act done in obedience to the command of a superior authority which she is bound to obey. She is not liable for a collision occasioned by the master's act in obedience to an order of an officer of the government whom she is by contract with the government bound to obey; as by hanging on upon her warp under the order of the Captain of a Queen's ship, or by acting in obedience to the orders of the Dockmaster in going into dock. (*Sultanea. Bilboa.*) The responsibility is with the officer who issued the command.

886. We have already spoken in detail of the extent of her exemption from liability in obeying the orders of a pilot whom she is bound to receive.

887. The owner of a British ship is wholly exempted from loss or damage which may happen without his actual fault or privity:—1. By destruction or injury through fire of any goods on board his ship. 2. By robbery, embezzlement, making away with or secreting any gold, silver, watches, jewels, diamonds, or other precious stores on board his ship; unless the owner or shipper at the time of shipping insert in his bills of lading, or otherwise declare in writing to the master or owner, the true nature or value of such articles. 1 M. S. A. 502.

888. The ship is liable for the negligent conduct of any other agent to whom she is confided, as well as for the negligences of her master or officer in command. (*Ruby Queen.*) And she is liable whether she remains under the

control of her owners, or is transferred to the control of others, by a charterparty, making the charterers owners for the time. *Ticonderoga*. *Fenton v. Dublin Steam Packet Company*.

889. A ship of war is responsible as a merchant ship, but she is discharged from the custody of the court, being always in the custody of the sovereign. In England, the course is that the Lords of the Admiralty direct an appearance for defence of the action, restoring, by act of justice, the suitor to as good a position as if he had the ship in arrest. *Athol*. *Leila*. *Resolute*.

890. The ship continues liable, notwithstanding her assignment, after collision, and even after judgment at law recovered against her former owner.

891. **LIFE, LOSS OF.**—Neither the law of the sea, nor the common law of England, give any compensation for the loss of life by mismanagement of a ship. (*Cope v. Doherty*.) But compensation is given with reference to such loss occurring in British waters (1 M. S. A. 504), whether the ship be foreign or British. It is also given in respect of such loss occurring in a British ship by collision with a British ship on the open sea, and in cases in which any foreign country shall have intimated to the British Crown its acquiescence in such law, in respect of such loss occurring by collision between foreign ships of that country, or a foreign ship of that country and a British ship on the open sea. 3 M. S. A. 58.

892. **MEASURE OF LIABILITY.**—By the generally accepted law of the sea, the liability of the owner for damage occasioned by the vessel's misconduct is limited only by the amount of the injury she inflicts, and the costs of compelling him to make compensation. *Cope v. Doherty*. *Wild Ranger*.

893. **LIMITATION OF LIABILITY.**—The policy of commerce has induced most nations to prescribe limits to such liability where the owner has not personally been guilty of

negligence or fault. This limitation is of comparatively modern origin ; it does not appear to have found place in the Rhodian or the Roman law, or in the laws of Oleron, Wisby, and the Hanse. It was first adopted by Holland, next by France, afterwards by Rotterdam. It was introduced into this country in 1734, by the statute 7 Geo. II. c. 15 (Abbott, 394, 396) ; since which it has undergone various modifications, the last of which was made in 1862.

894. According to the law of Britain, the owner, except under particular circumstances, is not liable for damage beyond the value of his offending vessel and the freight. But it must excite the smile of the jurist unfamiliar with the constitution of English tribunals, to observe the roundabout way and expensive friction by which he is to obtain the benefit of that immunity.

895. The common-law court cannot directly touch the offending ship, but gives damages for the injury arising from collision by a judgment, under which all the property of the owner, and his person, may be taken. It knows nothing of the value of the vessel. The court of law cannot recognize the law, but gives its verdict and judgment separately in each action ; so that, notwithstanding the law, ten times the ship's value might be recovered in a series of actions.

896. The Admiralty Court cannot directly touch the owner or his property, it can only arrest, imprison, and sell the offending vessel, to whomsoever she belongs ; she alone is amenable to this jurisdiction. The first of fifty injured parties (ships and persons) who obtains judgment, is first served, and each in succession ; the first who can complete his remedy carries off the whole or the greater part of the produce, and little or nothing remains to answer subsequent claims.

There is a third tribunal,—the Court of Chancery. To this the injured party has no access ; if he come he is dismissed, and compelled to pay the costs of coming to the

wrong place, and told that the Law Court or the Admiralty is the proper arena, as though Equity had nothing to do with the matter. But as soon as two or three, or twenty or thirty, or more or less, have gone to the Court of Law and two or three, or twenty or thirty, or more or less have gone to the Court of Admiralty, where not one of them has a chance of getting relief, the shipowner walks into Chancery, and that court stops all the actions in the Law Court against him, and all the actions in the Admiralty against the vessel, on his producing her value, and an affidavit with his bill. He obtains an injunction. Then all must come from the Law Courts and the Admiralty into the forum from which they had been excluded, and come with speed, lest its door should again be closed against them.

897. The Merchant Shipping Act (1 M. S. A., part ix., sec. 504) exempted the owner of a sea-going ship from all liability in damages beyond the value of his vessel and freight, subject to a provision that in case of loss of life, or personal injury to any passenger, the value of the ship and freight should not in any case be taken at less than £15 per registered ton, in cases in which, without his actual fault or privity,—

1. Loss of life or personal injury was caused\* to any person carried in the ship.

2. Damage or loss was caused to any goods, merchandise, or other things on board the ship.

3. Loss of life or personal injury was, by the improper navigation of the ship, caused to any person in any other ship or boat.

4. Any loss or damage was, by the improper navigation of the ship, caused to any other ship or boat, or goods, merchandise, or other things on board any other ship or boat.

And (by sec. 505) it was declared that the value of the carriage of any goods belonging to the owners, passage-money and hire under any contract, except one to begin



six months after the loss, should be considered as freight ; and (sec. 515) it was declared that all sums paid for damages or costs, under the ninth part of the Act, might be brought into account among part-owners of the ship as money disbursed for her use.

And (sec. 516) it was declared that nothing in the ninth part of the Act contained should lessen or take away any liability to which any master or seaman, being also owner or part-owner of the ship, was subject in his capacity of master or seaman, or extend to any British ship not being recognized as a British ship by the Act.

898. This Act extends to all British colonies, whether acquired by conquest or settlement. (Rajah of Cochin.) And (sec. 547) the legislative authority of any British possession was empowered, by any Act or Ordinance, confirmed by the Queen in Council, to repeal, wholly or in part, any of its provisions relating to ships registered in such possession, from the time of the proclamation of such Act or Ordinance and order of approval.

899. The Act extended the limitation of liability to the owner of a British ship in respect of a collision with another British ship on the open sea, or in the waters of a foreign nation. (Cleopatra.) And it extended that protection to the owner of a British ship in respect of a collision with a foreign ship in British waters. *General Iron Screw-Colliery Company v. Schurmans.*

900. It was held that it did not extend the limitation of liability to the owner of a foreign ship which had injured another foreign ship on the open sea. *Cope v. Doherty.*

901. But the Merchant Shipping Act of 1862 (3 M. S. A., s. 2) repealed the 1 M. S. A., ss. 504, 505, except as to any liabilities incurred before such repeal ; and in substitution for those clauses, it provides (sec. 54) that the owner of any ship, *whether British or foreign*, shall not, in cases where all or any of the following events occur without his actual fault or privity ; that is to say,—

1. Where loss of life or personal injury is caused to any person carried in his ship.

2. Where damage or loss is caused to any goods, merchandise, or other things whatsoever on board his ship.

3. Where loss of life or personal injury is, by reason of the improper navigation of his ship as aforesaid, caused to any person carried in any other ship or boat.

4. Where any loss or damage is, by reason of the improper navigation of his ship as aforesaid, caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat,—  
be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding £15 for each ton of his ship's tonnage; nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury, or not, to an aggregate amount exceeding £8 for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing-ships, and in the case of steam-ships the gross tonnage, without deduction on account of engine-room.

902. If a foreign ship has been, or can be, measured according to British law, the tonnage, as ascertained by such measurement, shall, for the purposes of this section, be deemed to be her tonnage. If she has not been, and cannot be, measured under British law, the Surveyor-General of Tonnage in the United Kingdom, and the chief measuring-officer in any British possession abroad, shall, on receiving from or by direction of the court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would, in his opinion, have been the tonnage of such ship if she had been duly measured according to British law; and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be her tonnage.

903. When (sec. 60) it appears that the rules concerning the measurement of tonnage of merchant ships in force under the Merchant Shipping Act have been adopted by the Government of, and are in force in, any foreign country, the Crown may, by Order in Council, direct that the ships of such foreign country shall be deemed to be of the tonnage denoted in their certificates of registry, or other national papers, and it shall no longer be necessary for such ships to be remeasured in any British port or place; but such ships shall be deemed to be of the tonnage denoted in their certificates of registry or other papers, in the same manner, to the same extent, and for the same purposes, as the tonnage denoted in the certificates of registry of British ships.

The issuing, modification, and publication of such Orders in Council are regulated by sections 61, 62, 63, and 64.

904. The extension of this limitation of liability is in accordance with international law.

905. As a general principle, the rights arising out of a contract, and the question whether a particular act is a civil wrong, creating a right to compensation, are to be determined by the law of the country in which the contract was made or the act was done. If, then, that contract was made, or that act was done on the sea, which is not within the jurisdiction of any country, the rights arising from it must be determined by the law of the sea.

906. We have already observed that every country has the right to legislate as to the conduct and rights of its own subjects, as among themselves, on the sea, and, so far as the administration of the law rests with its own tribunals, even within the territories of another nation; and that, on the other hand, no country can rightfully legislate as to the conduct or rights of foreigners among themselves, or their rights against the subjects of the legislating nation, arising out of contracts or acts entered into or occurring within the limits of a foreign nation, or on the open sea.

907. Conventions may, however, be made between na-

tions, creating laws obligatory upon the subjects of the contracting parties within the limits of such nations, or on the open sea; and, so far as the administration of the law rests with their tribunals, even within the territories of another foreign country.

908. Every nation may moreover confer privileges on the subjects of a foreign nation, and prescribe the conditions on which such privileges shall be enjoyed. The foreigner who claims the privilege must comply with the conditions.

If two nations, even by distinct acts, confer the like privilege on the subjects of each other, a forum, foreign to both these nations, may justly consider such concessions as constituting a common law for the subjects of the two nations, as though made in pursuance of a convention between them. In doing so, the foreign forum would act in aid of the law of such nations.

909. In accordance with these principles, the municipal law of England cannot be properly applied between foreigners, whether of one or several nations, on a question as to the wrongfulness of collision, or the rights springing from a wrongful collision, or as to salvage, on the high seas, or within the aquatic territories of any foreign state. As between them, the question of right must be determined according to the law to which they are amenable—the law of the sea, the municipal law of both parties, or the law arising out of convention, or the common law of the subjects of both countries, created by the reciprocal concessions to which we have alluded. If a convention exists between the country of the forum and the country or countries to which both litigants belong; or if one of the litigants belongs to the country of the forum, and the other to a country within the convention, then the question of right must be determined according to the convention, and, so far as the convention adopts it, the municipal law of the country of the forum, by reference to that municipal law.

910. But the remedy for the violation of rights is go-

each is entitled to compensation within the extent of the full value of the *Mary*; so that the pernicious vessel may involve her owners in liability to many times the amount of what she was worth.

916. THE VALUE of the impugnant vessel is what she was worth at the time of inflicting the injury, to be determined, on the best available evidence, by competent valuers selected by arrangement, or, if necessary, appointed by the court. (*African Steam Ship Company v. Swanzey.*) When a ship has been sold by the Admiralty, her value has been taken at the gross price paid by the purchaser, without deducting the expenses of sale. (*Leycester v. Logan.*) And no deduction is to be made for any damage she may have sustained from the collision.

917. The costs of the sale are not to be deducted, but must be borne by the owner, because the valuation is in relief of his liability; and for the same reason he must bear the costs of the actions against him at law, and in the Admiralty, and the costs of the proceedings in Chancery, of convening the parties interested and dividing the fund; but he is not to be burthened with the costs or expenses occasioned by the litigation of conflicting claims. *African Steam-Ship Company v. Swanzey. Leycester v. Logan.*

918. The parties injured are entitled to whatever profit may have been derived from investment of the amount paid into the Court of Chancery, and to interest at £4 per cent., or any further sum which the owner is bound to pay in respect of the value of the ship and freight. *Nixon v. Roberts. Hoangho. Dundee. Leycester v. Logan.*

919. The provision (1 M. S. A. 504) that the value of the vessel should be estimated at £15 per ton at least, was introduced only to provide a greater compensation for the loss of life or personal injury; when, therefore, all such damages had been otherwise satisfied, the owner was relieved from that mode of estimating the value of his ship. (*Nixon v. Roberts.*) See 3 M. S. A. 54, which has introduced a special provision on the subject.

920. In any proceeding, under the Merchant Shipping Act, against the owner on account of loss of life, in the absence of proof to the contrary, the master's list, or the duplicate list of passengers, delivered to the proper officer of Customs, under the Passengers Act, 1855, sec. 16, is sufficient proof that the persons, in respect of whose death any prosecution or proceeding is instituted, were passengers on board the ship at the time of their deaths. 3 M. S. A. 56.

921. **REMEDY.**—The remedy for an injury caused in the open sea is primarily to be sought in the court of the nation to which the aggressor belongs. To that court, if he find the offender within its jurisdiction, the injured party should appeal.

922. If the aggressor come within the national waters of the aggrieved, either immediately or at a reasonable time after the aggression, the aggrieved has a right to resort to the courts of her own country for redress.

923. In aid of this right, so far as the British Crown and its subjects are concerned, the law provides (1 M. S. A. 527) that if any foreign ship which has caused injury in any part of the world to any property of the Crown, or any subject, shall be found within any port, river, or three miles of the coast of the United Kingdom, she may be arrested by the officer of Customs, or other officer named in an order under the authority of a Judge of any Court of Record, or of the Admiralty, or of the Court of Session, or of the Sheriff of the colony within whose jurisdiction she is. This order is to be granted on its being shown, on summary application, that such injury was occasioned by the misconduct or want of skill of the master or mariners of such vessel. And she is to be detained until her owner, master, or consignee, shall have made satisfaction for the injury, or given security, to the satisfaction of the judge, to abide the event, and pay such costs as may be awarded in such action, suit, or other legal proceeding as may be instituted in respect of the injury. And (1 M. S. A. 527) such ship may be detained by any

commissioned officer, on full pay, of the Navy, or officer of the Customs, or consular officer, when necessary, to afford time for making application to the judge or sheriff.

924. If a ship on the open sea cause injury to a ship of her own nation, and sail into a foreign port, the injured vessel, or her owner, may appeal to the tribunal of that court, or wait until the aggressor returns to her own country. He may pursue his remedy in either.

925. If the injury is occasioned by the ship of one nation to the ship of another, and the aggressor sail into a port of a nation foreign to both, the injured vessel may pursue her remedy there.

926. CONFLICT OF LAWS.—If, as to the third part of this Act (ss. 109–290, as to masters and seamen), in any matter relating to any ship, or to any person belonging to any ship, there appears to be a conflict of laws, then, if there is in such third part of the Act any provision on the subject which is thereby expressly made to extend to such ship, the case is governed by such provision; if there be no such provision, the case is governed by the law of the place in which such ship is registered. 1 M. S. A. 290.

927. COURTS, ADMIRALTY.—Marine affairs have in most nations been committed more or less to a jurisdiction distinct from those which preside over matters arising on land.

In England, the jurisdiction of the Arch-Pirate, and his successor the Admiral, was anciently far more extensive than it is at present.

The history of that tribunal is beyond the scope of this work, nor does its constitution fall within it, further than to state that the Court of the High Admiral is constituted of a judge who acts in matters of collision, with the assistance, for ascertainment of the facts and as to nautical conduct, of two persons experienced in maritime affairs, two of the masters or elder brothers of the Trinity House, a maritime institution; and in the estimate and assessment of value and damages, with the assistance of merchants and persons

skilled in the subject of inquiry in aid of its registrar, and other more immediate officers. From this court there is an appeal to the judicial branch of the Privy Council, which avails itself of similar aid from naval sailing-masters, and, when necessary, from other persons experienced in matters of shipping and nautical affairs.

928. The jurisdiction of the Admiralty is, in rem, over the vessel against which the claim for injury, salvage, pilotage, and the like is made; it has jurisdiction also against the cargo generally as to salvage, but in respect of collision, although it be the property of the shipowner, only to the extent of the net freight due after all deductions, including the costs of paying the amount into court, and any penalties which may have accrued from non-fulfilment of the charter-party. Its jurisdiction does not extend to attachment of the goods of the owner; in fact, its jurisdiction is against the ship or property saved. It impersonates the vessel with her liabilities and rights. (Victor. Leo.) Therefore the injured vessel appears also in her proper person as a plaintiff; and when each ship involved in a collision asserts that the other is in fault, there are generally cross-actions, which are heard together. Mangerton; William.

929. Its jurisdiction extends over the high seas and all British waters. In colonial waters its jurisdiction is concurrent with the colonial courts, and in exercising that branch of its jurisdiction it gives effect to the local laws. Peerless.

930. It has jurisdiction as to collisions and the like occurrences on the open sea, not only in questions between two British ships, or between a foreign and a British ship, but also between two foreign ships, if either seek its aid. And such is the jurisdiction exercised by other European courts and the courts of America, and properly exercisable in all states where there is jurisdiction against the ship by the court in whose country the offender is found. Grieweswald. Johan Friedrich.

931. It has jurisdiction between a sea-going vessel and a



barge, which does not fall within that denomination, in a case of collision in waters within the body of a county. *Malvina*.

932. It has jurisdiction between two British vessels, though one is English and the other Irish, in respect of a collision occurring in a foreign river in the waters of a foreign state. *Diana*. *Cleopatra*.

933. But it has no jurisdiction in respect of a collision between two foreign vessels in the waters of any foreign state, except when such right has been conceded by that foreign state. *Ida*.

934. The supreme British Court at Constantinople has, under a convention with the Sultan, and the Act 6 & 7 Vict. c. 94, s. 1, and Order in Council, 27 August, 1860, jurisdiction in cases of collision between British ships within Turkish waters, both in rem and in personam. *Laconia*.

935. The Court of Admiralty has not jurisdiction to arrest a foreign ship at the suit of a British part-owner, to compel bail to be given for her return to her own port, for the vessel in which he has embarked his capital is subject to the law of the country to which she belongs. *Graff*. *Arthur*. *Bernsdorff*.

936. It has not jurisdiction against a pilot to compel him to pay the damage of a collision. The remedy of the injured party is at common law, by suit on the bond given to the Trinity House or other institution to which he belongs. *Maria*.

937. AMOUNT OF DAMAGE.—As the proceeding in the Admiralty is against the ship and the freight to which she is entitled, it can give relief only to the extent of that amount to be raised by sale, unless she is redeemed. Sometimes it is necessary to ascertain the amount of damage done, and also the value of the offender and her freight; sometimes the amount of the injury is confessedly beyond that value; in such case expense is obviated by ascertaining simply that value. But in the Admiralty, the first who establishes his demand by decree, is to be paid in full to the extent of the value of the offender, which might leave little or nothing

to answer other demands. For this reason it is that the Court of Chancery grants an injunction to restrain proceedings in the Admiralty, when there are several injured, that the amount may be equitably distributed among the sufferers, and this injunction will be granted even after judgment in which the ship has been condemned. *Lyra. Leicester v. Logan.*

938. More than the amount of the value of the ship and freight cannot be recovered against a foreign owner, when entitled to the limited liability, although he may have given a bond for a larger amount. (*Duchess of Brabant.*) The lien for the damages awarded in case of collision, or for salvage, has precedence of the lien of the master and crew for wages. *Linda Flor.*

939. This is not the place to enter into a general inquiry as to the practice of this court or its observances with regard to costs, but it may be convenient to the mariner that we should mention a few isolated points.

940. The Admiralty takes judicial notice of the prescriptions of the Merchant Shipping Acts, such as the incapacity of a ship to recover compensation by reason of her non-observance of the rules as to sailing, signals, and the like, although the objection is not pleaded.

941. The court refused to require a foreigner, in a suit for damages against an English vessel for collision, to give security for damages, on the ground that the defendant disputed the identity of his vessel with the impugnant. *Peri.*

942. The court has refused costs to the plaintiff ship, on account of the misconduct of the crew towards the ship which had committed the aggression. *Catalonia.*

943. The court gives costs against a ship of the Royal Navy in the same manner as against a private vessel. But it cannot give costs against the Crown, plaintiff in a case of collision, as such a case is not within the 18 & 19 Vict. c. 90. Consequently, if the Crown and others are co-plaintiffs, the other co-plaintiffs have to bear the whole burthen; but

in a proper case the Crown generally relieves them. Swallow. Leila. Resolute. Leda.

944. Each party paid his own costs of the reference as to amount of damage, where less than one-third, although more than one-fourth of the plaintiff's claim was allowed. Peerless.

945. The plaintiff, failing to prove the identity of the defendant's ship with the offender, was ordered to pay the costs of the suit; but the court did not award damages against him for the detention, inasmuch as his conduct appeared to be *bond fide*. There was difficulty of identification from darkness, and he had made subsequent inquiries, which afforded good grounds for believing that the defendant was the offending ship. Active. Evangelismos.

946. The Board of Trade may procure a jury of twenty-four persons, to be summoned to determine the number, names, and descriptions of all persons killed or injured by reason of any wrongful act or default. 1 M. S. A. 507. Sections 508 and 509 prescribe the proceedings to be adopted, and provide for the costs of such inquiry, and empower the Board of Trade to enter into certain compromises in respect of death or personal injury. Section 510 declares that the damages payable in each case of death or injury shall be assessed at £30. These damages are the first charge on the aggregate fund for which the owner is liable. The application of the amount is prescribed by that section.

947. COURTS OF LAW.—The owner of the injured ship or cargo, the passenger or other person who has sustained personal loss or loss of property, the personal representatives of persons who have been destroyed, the salvors of goods, may all proceed in the courts of common law by action for the damage which they have sustained. The judgment of the court of law is against the owners of the vessels or goods which have occasioned the injury, or had the benefit of the salvage, and it is executed against their persons and goods.

948. But relief in some cases encounters difficulties, to

which we have already referred in cases of collision, where both vessels are in the wrong, and salvors can have no division among them in those courts of the amount which they may recover.

949. We must refer to Lush and other large treatises for the proceedings at common law.

950. The actions in these courts, however numerous, may all be stayed by the Court of Chancery, when the damage she has done exceeds the value of the ship.

951. The right of action for damages, for loss of life, or personal injury, is reserved (1 M. S. A. 512) in case the Board of Trade decline to interfere, or in certain terms if the claimant is dissatisfied with the amount assessed (ib. 511); but by resorting to this right he loses the priority of lien, which he otherwise has, against the fund. Ib. 513.

952. THE COURT OF CHANCERY in England or Ireland, and the Court of Session in Scotland, and any competent court in any British possession, subject to the right given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, may entertain proceedings at the suit of the shipowner, where any liability has been, or is alleged to have been, incurred by the owner in respect of loss of life, personal injury, or loss of or damage to ships, boats, or goods, and several claims are made or apprehended, for the purpose of determining the amount of such liability, subject as aforesaid, and for distribution of such amount rateably amongst the several claimants. And such court may stop all actions and suits pending in any other court in relation to the same subject-matter. Its proceedings are conducted in such manner, and subject to such regulations, as to making any persons interested parties and the exclusion of claimants who do not come in within a certain time, and requiring security from the owner and payment of costs as the court thinks fit. 1 M. S. A. 514.

953. The shipowner, to sustain his bill in Chancery for injunction, and for the ascertainment and distribution of the

value among claimants, or expected claimants, must admit his liability. *Hill v. Andus*.

954. The bill may be sustained after actions commenced in the court of law. The injunction will be granted only on payment into court of the value of the ship and freight, to be stated by the shipowner, or, when she belongs to a company, by its managing director or proper officer, having regard to the Act of Parliament. *African Steam Ship Company v. Swanzey*.

955. It may be sustained after a decree of the Court of Admiralty condemning the ship and freight with costs, and an order for appraisement and sale,—indeed, at any time before actual sale; and although the Court of Chancery will not exercise a direct control over the ship, if in the custody of the officer of the Admiralty, it will impose terms on the party who obtained the condemnation to enable Chancery to apportion the proceeds among all entitled to participate. But when she has been sold the shipowner must pay into court the difference, if any, between the value of the ship and freight and the amount realized by the sale. *Leycester v. Logan*.

956. The order for an injunction also directs advertisements to discover the claimants, and an inquiry as to the value of the ship and freight, and how it ought to be apportioned among the persons who may establish their claims (*African Steam Ship Company v. Swanzey*); and the amount is apportioned accordingly.

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#### CHAPTER IV.

##### WRECK AND CIVIL SALVAGE.

957. WRECK.—We have treated on the subjects of management and mismanagement and misconduct, and their

consequences, as they arise on the open sea or in the waters of a particular state.

Human power and skill are often unequal to the terrible encounter with the winds and waves and other perils of the ocean.

Part of the cargo, or the whole, or all things movable, must go overboard to lighten the ship to save her from foundering or wreck.

The consideration of the average, which all interested should bear in the common loss from this calamity, is collateral to the laws of navigation. Its ramifications are of vast extent. It was the favourite topic of the laws of Rhodes, of Rome, of Oleron, and the Consolato del Mare, an interesting topic ; but it does not fall within the compass of this work.

All has gone overboard ; the good ship strives and strains and struggles ; the knowledge of the pilot, the skill of the master, the energy of the crew, the industry of the sailors, the labour and appliances of the pumps and her carpenters, battle with the billows in vain ; she is abandoned, water-logged ; she is stranded or hurled upon the shore ;—where are her cargo and her crew ? She has not in vain sounded the signals of distress. Intrepid mariners are issuing from the coast. Pilots, more conversant with the danger, are straining their strength towards her. They are on board ; the bravery of the lifeboat has at length overcome the breaking and baffling billows, or the life-preserving cannon has roared in grateful thunder, and flung the rope of salvation, instead of the bolt of destruction, upon her quaking deck. She struggles ; she heaves heavily ; the storm and the waters yield ; she is rescued at the extremest struggle.

Such services deserve requital. The case of the wreck and the law of salvage are, to some extent, incident to the rights of navigation, for they are the protectors of those rights.

958. The barbarian regards the treasures and the timber

with which the storm has strewed his coasts as the gifts of the bounteous ocean, and slaughters or enslaves the wretches who cling to the wreck. The lord of the barbarians seizes upon the godsend, and allows his vassals a scanty share.

Gentler savages have soothed the perishing mariners, administered to their necessities, gathered the fragments, and lent their rude assistance to repair the ship.

Civilization provides protection for the relics of the catastrophe, and for every one in distress; and gives to the common stock, by way of compensation for the charge it has to sustain in providing such protection, that for which no owner can be found. The institutions of all civilized nations do not quite agree, but the principles upon which they are founded are the same.

What we have stated, with modifications to correspond with the intermediate stages of society, affords the substance of the history of the law of wreck.

959. The Rhodians and, following them, the Romans, declared that the right of property was not relinquished by committing it in desperation to the custody of the waves; and that, though the storm had reft the ship from the mariner and hurled it upon the coast, it had not wrenched it from the dominion of the law; but that the owner might reclaim the fragments against the finder, and vindicate his title against the thief. To him who honestly preserved and restored it, Rhodes and Rome gave a liberal reward; on those who attempted to plunder, they wreaked the fulness of their wrath. When no one entitled appeared after sufficient time and opportunity, they held the finders entitled to all descriptions of wreck, as though returned into the common stock and belonging to those who should first appropriate it to their use, and, perhaps, as an inducement to keep it carefully until a claimant should appear.

960. Wreck was one of the eight "pack-horses" of the kings of Wales, or, rather, it was borne to him by one of his pack-horses, the sea. (Venedolian and Dimetian Codes,

i. 79, 487.) But the kings did not enjoy the whole spoil, the Church occasionally claimed a share. If a ship be wrecked upon the land of a bishop, the proceeds are to be divided between the bishop and the king. If it be wrecked on the king's own land, it entirely belongs to him. (Dime-tian Code, i. 555.) But by reference to the 'Triads,' it appears that the Welsh had a righteous notion of wreck,—it comprised only that for which no owner appeared. "Three things the kings shall have which the sea shall cast upon the land; first, a ship without an owner and its cargo and goods." Triads, i. 609.

961. Wreck was also one of the "flowers" of the prerogative of the Saxon and Norman kings:—"Hæc sunt jura quæ rex Angliæ solus et super omnes homines habet in terra sua—flemenfyrme, thesaurus inventus, naufragium, maris algarum." (Ll. Hen. I. x. 1. De jure regis.) By an Act, not so wisely discriminative as the 'Triads,' 3 Edw. I. c. 4 (1275), it was ordained that nothing should be deemed wreck if a man, dog, or cat escaped alive from the vessel; but that it should be kept by view of the sheriff or coroner to be restored to the owner if claimed within a year and a day; if not so claimed, to be delivered to the king's proper officers or the person entitled to wreck. So that the owner's title might depend on the life of, and the clemency of the wreckers towards, his cat. By the Act as to the king's prerogative rights, 17 Edw. II. c. 11, it is declared that the king shall have wreck of the sea throughout the realm, whales and great sturgeons taken in the seas or elsewhere within the realm, except in certain places privileged by the king. The 27 Edw. III. stat. 2, c. 13, the statute as to commerce, provides a remedy for merchants robbed on the sea for the recovery of their goods brought into England; and that when ships are driven by tempests or other mischance on the coasts, and the goods come to the shore, not being within the description of wreck, they shall be delivered without delay to the merchants to whom they belong, on a reasonable



compensation for the trouble of saving them, in the discretion of the sheriffs, bailiffs, or other ministers of the king, with the assistance of four or six respectable persons, and if found within the franchise of lords other than the king, by their seneschals or bailiffs, with the assent of four or six such persons.

962. In 1286, in the reign of Alexander III., provisions were made in Scotland for preserving shipwrecked property for the owners. In 1430, the Parliament of Scotland declared that shipwrecked property of foreigners should belong to the owners or the king, according to the law of the nation of the ship.

963. The *recondite* and systematic code of Barcelona, the *Consolato del Mare*, the looser collections of Oleron and Wisby, and many other compilations of customs of the European nations, some by distinct enactments, others by denunciations, endeavoured to preserve shipwrecked mariners and their property from the barbarians of the coasts, providing reasonable compensation for the services by which they might be saved, and in some cases vesting the property in the sovereign or lord of the district if unclaimed within a year and a day.

964. In France, shipwrecked property was vested in the sovereign, until by the Ordinance of Marine of 1681 (l. 4, t. 9, art. 21, 26) it was placed under the protection of the Crown for the benefit of the owner, whether foreign or French, if claimed within a year and a day; if not claimed within that time, it was to be divided equally between the admiral and the king or his grantee.

965. The law of the Northern countries with reference to wreck was better calculated to protect it from plunder than the more theoretical law of Rhodes and Rome, inasmuch as it diminished the temptation to destroy the unhappy survivors for the sake of the prey.

Provisions for the protection of shipwrecked property are common in treaties from an ancient date.

966. The storm-tossed vessel and her cargo may be scattered on the waters and on the shore. In the beginning of her peril, portions of her contents may be cast overboard, with casks and buoys fastened to them to indicate where they may be found : these are distinguished by the name of *ligan* ; of others thrown overboard in indiscriminate confusion, some may sink, the rest may float (*jetsam* and *flotsam*) among the rocks, the currents, and the waves ; the hull or its fragments, the residue of the cargo or that which was thrown overboard, may be hurled or drifted—wrecked—upon the shore.

967. By the law of this land, in conformity with the Rhodian law, the owner retains his title to *ligan*, *jetsam*, *flotsam*, wreck, to all the relics which may be saved, subject to a reasonable compensation for salvage and care. But when no owner appears within a year and a day to make his claim, the derelict property belongs to the Crown, or to those who claim under grants from the Crown. The titles were various to the articles designated by those euphonious names, but to which of the feudal chiefs they anciently belonged, or to whom they now belong, is immaterial to the merchant and mariner, who knows not where they are. For practical purposes they are all comprised under the designation of wreck,—wreck of the sea or wreck at common law.

968. The Merchant Shipping Acts of Britain have established in the owner and all who properly assist in the preservation of wrecks, rights in accordance with the natural right over the lands which constitute the bank of the sea ; they have also appointed officers, and made penal provisions for the security of every kind of wreck.

969. All persons rendering assistance to a ship in distress or the persons on board, unless there is some public road equally convenient, may pass and repass, with carriages and horses, if necessary, over any adjoining lands, and deposit the cargo and articles recovered on such lands, doing

as little damage as possible. The owner or occupier of the land is entitled to compensation for the damage sustained, which constitutes a charge upon the ship, boat, cargo, or articles in respect of which the damage has been occasioned. In default of payment, he has the like remedies for recovery as for the recovery of salvage. And any owner of land who (first) impedes or hinders any person authorized from passing or repassing, with or without carriages, horses, and servants, by locking his gates, refusing to open them, or otherwise, or (secondly) impedes or hinders the deposit of any cargo or other articles recovered from such ship or boat, or (thirdly) prevents such cargo or article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of deposit, is liable to a penalty not exceeding £100. 1 M. S. A. 446.

970. WRECK.—In England, the Board of Trade has the superintendence of wreck and the appointment of receivers and inspectors. 1 M. S. A. 439.

971. The officers of the Coast-guard have the powers given to the inspectors of the Board of Trade, and on the occurrence of shipwreck or abandonment, damage or casualty to ships, the inspecting officer of the Coast-guard, or the principal officer of Customs, is to make inquiries respecting it; and if it appear to him necessary, or the Board of Trade so direct, he is to apply to two justices or a stipendiary magistrate to institute a formal investigation. The Act prescribes the method of proceeding on such inquiry, and invests the functionaries with the necessary powers. (1 M. S. A. 433–438.) And by a series of sections, 439 to 457, this Act makes provision for the appointment and method of proceedings of the receivers, and defines their powers.

972. The owner of wreck, who finds or takes possession of it, must, under a penalty not exceeding £100, give notice, as soon as possible, of his having found or taken possession of it, describing the marks by which it is distinguished, to the receiver of the district within which it is

found. (M. S. A. 450.) Any person other than the owner finding or taking possession of wreck must give the like notice, under penalty not exceeding £100, and forfeiture of all claim to salvage, and the liability to pay the owner double the value of the wreck. *Ib.*

973. Any person who obstructs the saving of, or plunders or secretes any shipwrecked property, is liable to a penalty not exceeding £50. 1 M. S. A. 478.

974. Any person taking into or selling in foreign parts any wreck, property derelict, stranded or otherwise in distress, found within the United Kingdom, is guilty of felony, and subject to four years' penal servitude. 1 M. S. A. 479.

975. The hundred or similar district in England, the county, barony, town, or parish in Ireland, the county, city, or borough in Scotland, in or nearest to which the offence is committed, is liable to make compensation to the owner for the plunder, damage, or destruction of his ship, boat, apparel, or cargo, stranded or otherwise in distress on or near the shore, committed by any persons riotously and tumultuously assembled, whether on shore or afloat. 1 M. S. A. 477.

976. When articles belonging to or forming part of any foreign ship wrecked on or near the coasts of the United Kingdom, or parts of its cargo, are found in or near the coasts, or brought into any port of the United Kingdom, the Consul-General of the country to which the ship belongs, or, in case of the cargo, to which its owners belong, or any consular officer of the country authorized by treaty or agreement with this country, is, in the absence of the owner, or master or other agent of the owner, deemed the agent of the owner, so far as relates to the custody and disposal of such articles. 2 M. S. A. 19.

977. Foreign goods wrecked and brought into the kingdom are subject to the same duties as on importation. But the Commissioners of Customs and Excise permit goods saved from any ship stranded or wrecked on its homeward voyage

to be forwarded to the port of its original destination, and such as are saved from any ship stranded or wrecked on its outward voyage to be returned to the port at which they were shipped, on giving security for the protection of the revenue. 1 M. S. A. 499, 500.

978. If the owner of the wreck establish his claim to it to the satisfaction of the receiver, within one year from the time when it comes under the receiver's care, he is entitled to have it delivered to him, on payment of the expenses, fees, and salvage provided by the Act. But if no owner appear within that period, and the admiral, vice-admiral, lord of the manor, or other grantee of the Crown of wreck in that place establish his title, he is to receive it on the same terms. If no such grantee appears, it is to be sold as property belonging to the Crown. 1 M. S. A. 470, 471, 475, and 3 M. S. A. 53.

979. The delivery of the wreck or its proceeds to the claimant, in pursuance of 1 M. S. A. part viii., discharges the receiver from all liability in respect of it, but does not prejudice or affect any question as to the right or title to the wreck as between third parties, or any question as to the title to the soil on which the wreck was found. 3 M. S. A. 52.

980. This Act contains provisions for the decision of disputed claims to wreck, and empowering the Board of Trade to purchase, for the Crown, rights of wreck, from corporations and others entitled to them. 1 M. S. A. 472, 473, and 474.

981. It also constitutes courts of naval officers for the investigation of questions of wreck on the high seas or abroad, invests them with considerable powers for that purpose, prescribes their mode of proceeding, the entry of their order on the ship's log, and the reports which they are to make to the Board of Trade. (1 M. S. A. 260-266.) It directs that any question on which a conflict of law may arise shall be determined, in the absence of positive provision in that statute, by the law of the place in which the ship is registered. 1 M. S. A. 290 (926).

982. CIVIL SALVAGE.—Salvage is a compensation and reward for labour, expenses, promptitude, peril, energy, and skill in saving, or assisting in saving, the whole or any part of a ship, boat, cargo, or things connected with them, and, incidentally, the freight already earned.

983. Civil salvage is in respect of such rescue from the perils of the sea.

984. Military salvage, of which we shall treat in a future page, is in respect of such rescue from the enemy,—the perils of war.

985. The distinction may be thus strongly manifested :—If a ship captured by the enemy is saved from the danger of the sea while going into the enemy's port in distress, the reward is civil salvage. (Franklin. Whea. 454. Abbott, 590.) Other distinctions will appear in a future page.

986. WHAT.—Salvage is a portion, or the value of a portion, of property saved, awarded as a compensation for saving it. Therefore there can be no salvage in respect of property unless there is property saved.

987. But there may be a right to reasonable recompense in the nature of salvage, although the property is lost, or although it is relieved from the peril by the cessation of the danger, or by the subsidence of the storm. Thus, if the master of a ship in danger or distress employ fishermen or others to send a steamer to his rescue, the persons so employed are entitled to a reasonable compensation for their service; and, if a steamer, at their instance, go to the ship's aid, she is entitled to compensation, although the ship is lost or the danger has passed away. Undaunted. E. U.

988. But when persons offer their assistance, although the offer is accepted, their title is only to salvage in its proper sense, and they earn no compensation unless some part of the property is saved. If, however, anything is saved, they are entitled to a proportion of that, although the ship and all the rest of the cargo is utterly lost (Undaunted. Santissima), and all who have assisted are entitled

to participate, in proportion to their assistance, although the property is ultimately rescued by others after their services had ceased. Atlas. Jonge Bastian.

989. LIFE.—And as salvage is a portion, or the value of a portion, of property saved, there is no salvage, according to the maritime law, in respect of the saving of human life. Silver Bullion.

990. But allowance was sometimes made in that respect, when connected with the preservation of property, by awarding a higher rate against the property saved; as in the case of steam-packets, whose value depended on their use and reputation in the conveyance of passengers.

991. The owner of a British ship, and also of a foreign ship within British waters, is, by positive ordination, rendered liable to pay a reasonable salvage, together with all expenses properly incurred in the performance of the service, to all persons other than the appointed receivers who render services to any ship or boat stranded or otherwise in distress on the shore of any sea or tidal water of the United Kingdom—1st, in assisting the ship or boat; 2ndly, in saving the life of any person belonging to her; 3rdly, in saving her cargo or any part of it. (1 M. S. A. 458, 459.) Passengers must be regarded as persons belonging to the ship. Monarch.

992. When the vessel is destroyed, or her value is insufficient, after satisfaction of the actual expenses incurred, to pay the amount of salvage due in respect of life, the Board of Trade is empowered to award to the salvors of life such sum as it deems fit out of the Mercantile Marine Fund, in whole or part satisfaction of any amount of salvage left unpaid in respect of such life. 1 M. S. A. 489.

993. The right of salvage must be determined according to the law of the country or place in which the act of salvage occurs. The legislature of one nation, therefore, cannot create or vary such right beyond its presidial line, except as between its own subjects; but the measure of the relief to be afforded in accordance with the right, ascertained by

the law of the place in which it has arisen, is determined by the forum in which the relief is sought according to the law, which it administers indifferently to foreigners and fellow-subjects.

994. "When the Government of any foreign country is willing that salvage shall be awarded by British courts for services rendered in saving life from any ship belonging to such country, when such ship is beyond the limits of British jurisdiction, her Majesty may, by Order in Council, direct that the provisions of 1 M. S. Act and of this Act, with respect to salvage for services rendered in saving life from British ships, shall in all British courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not." 3 M. S. A. 59.

995. Except under arrangements made in conformity with these provisions, the law of salvage as prescribed by the English Merchant Shipping Acts does not and cannot affect foreigners on the open sea, either in their relations to each other or their relations to a British vessel. Earl of Auckland. See 1 M. S. A. 296.

996. As the law maritime does not recognize salvage for the preservation of human life, the English court cannot award it for saving the crew or passengers of a foreign ship beyond the British presidial line, although the ship is brought into a British port, unless the country to which the ship belongs has come within the arrangements of 3 M. S. A. 59. Johannes. Silver Bullion. Zephyrus. Kenaway.

997. In almost every country salvage is allowed for the preservation of derelict property. It may be regarded as abandoned and utterly lost to the owners, except for the interposition and services of the salvors. For this reason, and perhaps to encourage the saving of it for the benefit of the sovereign or lord, it was the practice to allow a very high rate of salvage in such cases; but in modern times, regard



has been had, in cases of derelict as well as in other cases, rather to the fair remuneration of salvors for their services than to the nature of the misfortune to which the owner has been exposed.

998. Salvage is allowed on all subjects of wreck, jetsam, flotsam, and ligan. It is allowed on all property saved, whatever its nature may be. The saved property is impersonated and pays for its own salvation. (Peace.) Each owner bears his proportion according to the value of his part or proportion of the cargo. Norna.

999. Salvage is payable in respect of the freight entirely earned, or in the proportion which the portion of the voyage accomplished bears to the residue of the voyage when the freight has not been completely earned. Aline. Norna.

1000. It is payable for supplying from a ship's crew men in aid of a ship which has become incapable of proceeding by loss of her necessary complement of seamen. Roe. Janet.

1001. The right to salvage arises from assistance given in the saving of a vessel in distress or property exposed to danger, not from the accidental advantage which some other person or property may derive from the occurrence. Mere accident neither occasions liability nor entitles to reward. It has accordingly been held that the salvors of the *Mary*, though entitled to compensation for saving her, are not entitled to salvage against the *Emma*, because, but for that service, the *Mary* would have drifted against and struck her, or would have inflicted a heavier blow. Annapolis and Golden Light.

1002. It has been held that a claim for salvage of a foreign ship of war cannot be entertained in the Admiralty Courts of this kingdom. (Prinz Frederick.) This is not because compensation ought not to be made, but on account of the immunity of the foreign war-ship from attachment in the waters of a nation which has permitted her to enter. It must be assumed that the sovereign to whom she belongs will, on proper application, bestow a due reward.

1003. WHO ENTITLED.—As salvage is a reward for the service rendered in the preservation of the person or property, it may be stated as a general proposition that those, and those only, who are actually engaged in rendering it are entitled to participate; and as ships, boats, and various machines and implements are often employed, the owners of these things are also entitled to a fair participation. But this rule is subject to various exceptions. Magdalen.

1004. The reward is for personal service. The master and sailors, and even apprentices, of a vessel or fishing or other boat are entitled to retain what they receive to their own use; the owner of the ship or the master in whose service the apprentices are has no right to any portion of such earning, he is neither entitled to claim it from them or to deduct it from their wages. The shipowner is entitled to, and must be content with, the amount allotted to the ship for such aid as she has afforded, except where ships are fitted out for the express purpose of salvage-service, and the master and men are expressly engaged and hired for that service; in such cases the compensation belongs to, or is divisible among, the shipowner, master, and crew, or any of them, according to their contracts. Alfen.

1005. Indeed, according to the law of England (1 M. S. A. 182), any stipulation by which any seaman consents to abandon any right which he may have or obtain in the nature of salvage is wholly void, except (3 M. S. A. 18) stipulations made by seamen, belonging to a ship which, according to the terms of the agreement, is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by that ship to any other.

1006. When the service is rendered by different sets or parties of salvors, each set is entitled to a distinct reward, proportionate to its service, whether the several sets are acting at the same time in the same act of saving or in successive independent transactions. If one set of persons

rescue a ship from a situation of danger, but are obliged by perils of the sea or the inadequacy of their power to abandon her, and another set afterwards find her, whether in a new danger or not, and bring her to a place of safety, each set contributes to the saving and is entitled to participate in the compensation. The *E. U. Magdalen*.

1007. As the consideration is sometimes for compound services, persons who are not entitled to recompense for one portion of that compound may be entitled to a modified compensation for another portion of it. He who has incurred no expense is obviously not entitled to compensation for expense, though he may be for his skill, peril, and labour. He who is otherwise compensated for or is bound in duty to render, his skill and labour, may be entitled to compensation for expenses which he may have incurred. He who was bound in duty, in respect of wages or otherwise, to render ordinary assistance, might be entitled to a reward for extraordinary aid or for incurring un contemplated peril beyond the scope of his employment.

1008. Although a public ship is not entitled to salvage-remuneration for services rendered to a private vessel of her own nation, her officers and her crew are not under a duty to render their services gratuitously; their ordinary compensation is slender enough for their ordinary services, and, although bound to assist a ship in distress, they are entitled to a just compensation for their assistance. (*Abbott*, 562. *Earl Eglinton. Rosalie*.) And on the same principle the officers and crew of a coastguard vessel are entitled to a like reward. *Silver Bullion*.

1009. The owner of shipwrecked property is liable to pay, in respect of services rendered by officers or men of the coastguard service in watching or protecting the property, unless it can be shown that he or his agents declined such services when tendered, or that salvage has been claimed or awarded for such services. The remuneration is to be fixed by the Board of Trade, restricted within certain limits,

and is to be recovered, received, and applied as fees received by receivers under the Merchant Shipping Act. 2 M. S. A. 20.

1010. A neutral, who has purchased from one belligerent at sea, a ship captured from the adversary, with intent of restoring her, is entitled, if the owner adopt the transaction, to a salvage remuneration in addition to the amount which he has paid for the ship.

1011. A recaptor of a ship from the enemy is entitled to civil salvage for services which he may have rendered in preserving her from the perils of the ocean, in addition to his military salvage for the rescue from the foe. *Whea*. 456. *Louisa*.

1012. WHO NOT ENTITLED.—Persons who are under a duty to render the service which saves or aids in saving, are not entitled to salvage; therefore, the following descriptions of persons are not entitled to salvage, or to participate in the amount allowed to the class of persons with whom they have acted.

1013. The owner of a share of a ship saved by a vessel of which he is part owner is not entitled to salvage, on account of the service of his salvor-vessel, for she is engaged in saving his own property; but he is entitled to the benefit which accrues from deducting the share which he would otherwise have received from the amount to be paid by the vessel saved; for his helpmates are not entitled to the reward of his vessel. *Caroline*.

1014. The master, officers, and crew of a vessel are not entitled to salvage for their successful exertions in rescuing her from destruction, or even from mutineers, for it is a part of their duty. But if, after a vessel has been stranded, the crew are lawfully discharged, by the owner or by the master, acting in good faith, where the owner cannot be consulted, and they afterwards save or aid in saving the vessel or her cargo, they are entitled to salvage remuneration. Their relation to the ship, their character of crew with all their incidental duties, were determined by their dismissal. *Ab-bott*, 561, 2. *Vrede*. *Florence*. *Neptune*. *Warrior*.

1015. Passengers in a vessel in danger are themselves in danger ; there is a reciprocal obligation upon them and the crew to exert all their energies in the common cause ; the preservation of the ship is as much for their own safety as for the benefit of the owner ; their services are for their own benefit, as are the services of all the other assistants. They are not entitled to claim salvage for the saving of that which is connected with their own safety. But if a passenger of peculiar skill has through circumstances to take upon himself the management of the endangered vessel, and succeeds in rescuing her from destruction, his assistance is beyond his duty, and entitles him to a salvage reward. (Abbott, 560. *Vrede. Branston. Newman v. Walters*). So if passengers, after having left the ship with their property, return, or even, having the opportunity of leaving her with their valuables, remain, for the purpose of assisting the ship, they are entitled to salvage remuneration, for their duty had ceased. With their duty, their relation to the vessel, in sooth, their character of passengers had determined.

1016. So when accident or even misconduct brings two vessels into collision, it is a natural duty to render mutual assistance. That duty is now constituted a legal obligation. In every case of collision between two ships it is the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers, such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision. 3 M. S. A. 83.

1017. Ships sailing as consorts in a common enterprise are under a mutual and reciprocal obligation to aid each other ; each has the benefit of that obligation ; and she who escapes danger herself, and assists her consort, is not entitled to salvage ; for had the calamity befallen her she would have been entitled to the like exemption. And, in the absence of express agreement, such an obligation is inferred from the

association which they have formed. They are embarked in a common enterprise and a common risk. A man-of-war associated with transports for their protection, is not entitled to salvage (Abbott, 560); but ships which merely sail together, not embarked in a common enterprise, are under no such obligation; each is entitled to salvage for assistance to another. Custom has, in some places and among some ships, in particular occupations, introduced a similar duty of rendering gratuitously reciprocal aid; but where such a custom prevails it can be sustained only upon some reasonable mutuality and proportionate equality in the power to assist; therefore, such a custom among sailing-vessels will not establish a corresponding right, on the part of a sailing-vessel, against a steamer; for there is no adequacy of consideration, the capacity of the steamer to aid so much exceeds that of the sailer. *Africa*.

1018. The public ships of the nation, maintained at the public expense for the protection of her commerce as well as her other interests, are not entitled to any participation in salvage reward. *Rosalie*.

1019. A public officer, as one of the coastguard service, who merely permits his men to assist a ship in distress, the lords of the Admiralty, lords of manors, magistrates, flag officers, and others who merely authorize the rendering of salvage assistance, are not entitled to any salvage reward. *Abbott, 567, 569, 570*.

1020. Salvors of an abandoned vessel are under a peculiar duty, so far as is consistent with their safety and practicable, without great inconvenience, to take on board such of the crew as have had refuge in another vessel, unless it is more convenient that they should proceed in the vessel which has received them. But salvors of a vessel wholly or partially abandoned by her crew are not bound to deviate in search of such of the crew as had left her. *Orbena*.

1021. Persons engaged to render service in a limited capacity are not entitled to salvage reward in respect of

services rendered within the scope of their engagement, although the services became more arduous than had been expected. The pilot is bound to stand by and aid the ship he has taken under his charge, although his office is attended with greater danger or difficulty than he had anticipated. A steam-tug, or other ship, which has taken a vessel in tow, must not abandon her so long as, notwithstanding tempestuous weather or un contemplated difficulties, the fulfilment of his engagement is practicable, and neither the pilot nor the steam-tug is entitled to salvage remuneration for assistance afforded in such service. But if the state of the weather or other circumstances, including among such circumstances concealed unseaworthiness of the vessel, be or become such that the mere office of pilotage or towage is superseded or surpassed, and the pilot or tower in good faith enter upon the new avocation of salvor, the one or the other is entitled to remuneration for salvage service. But the pilot must be prompt in rendering his service, and not wait till the ship appears to be in danger; and if he can accomplish the purpose of pilotage by sailing ahead, or in any other manner, when he cannot board her, he must perform his duty as a pilot, and not by his own neglect convert himself into a salvor. Minnehaha. Fox. Andrews. Rosehaugh. Albion. Annapolis and Golden Light. Galatea. Medora. Hebe. Saratoga.

1022. And a pilot is not at liberty to decline the office of pilot because the ship requires services in excess of that duty, he is bound, if required, and if he can do so with a reasonable degree of personal safety, to perform his office of pilot, and he is entitled to salvage remuneration in respect of his extraordinary services or peril. Black Sea. Orion.

1023. Persons not regular pilots, who act as such where there are no licensed pilots, and licensed pilots beyond the district to which they belong, are entitled for guiding a ship to a place of safety, either to pilotage or salvage reward, according to the nature of the service which they perform. Hedvig. Rosehaugh.

1024. The charterer of a vessel is not entitled to participation in the share of salvage apportioned to the vessel, except in respect of any compensation for delay in the voyage; for the salvage service of the ship is a sort of personal service, and belongs to her owner, who bears the risk of any injury which may befall her. *Alfen.*

1025. Neither the lord of a manor, nor any other person, can, by taking possession of or intermeddling with ship or goods, against the consent of the owner or those acting under his authority, entitle himself to any compensation as a salvor. *Abbott, 556.*

1026. So beneficial is it, to the public and in particular to insurers, that every inducement should be held out to vessels to render assistance to others in distress, and so probable is it that all will reciprocally benefit by its observance, that it may be asserted as the law maritime, to which the law of every country ought to conform, that a policy of insurance is not imperilled by a vessel in rendering assistance to another in distress, unless she thereby places herself in extreme danger. There is, however, a want of accord in the decisions and judicial opinions on the subject; those of the American courts are more opposed to the principle than those of the British tribunals. *Hope. Lawrence v. Sidebotham. Deveran. Johannes. Boston. Henry. Orben.*

1027. A packet carrying mails must not deviate for this purpose except in cases of urgent necessity. *Martin.*

1028. CONDUCT.—They who engage in the pilot, towing, or salvage service, impliedly contract that they possess ordinary skill and capacity for that service. Persons who are not professed pilots, towers, or salvors, impliedly contract only that they possess such skill and capacity as may be reasonably inferred from their ordinary occupations, their numbers, the size and character of their vessels and other appliances. A fisherman with his smack does not represent that he possesses the skill of a sailing-master or the power of a steamer. *Minnehaha. Magdalen. Houthandel. D. K. Chester. Shersby v. Hibbert.*



1029. When a party of salvors is in possession and management of a ship or other property, with apparently adequate skill and power for the service, no others ought to interfere, except on their request or permission. But if the party in possession does not possess skill and power commensurate with the service they have undertaken, it is their duty to accept and ask for assistance, and, if necessary, to relinquish the office to others; and when the incapacity or inefficiency of those in possession is manifest, others have a right to interfere. The owner of the property has a right to refuse, demand, or accept such aid as he may think fit. It may sometimes be necessary or proper that different sets should act intermittingly at intervals. (Clarissa.) When the master or owner is present, he has the right of reasonable command. The master of a steamer or other vessel engaged in salvage service ought to follow the direction of the pilot in charge of the ship (Minnehaha); and all persons engaged in saving her ought to act, so far as is consistent with any superior knowledge they may possess, in obedience, or at least with deference, to the directions of the master, except in matters in which those of the pilot are their proper guide.

1030. The salvors sustain a sufficient punishment for the injury occasioned by ordinary mistake or error, in the diminution of the property, a proportion of which only constitutes their legitimate reward.

1031. The injury occasioned by gross negligence or error, such as by unnecessarily taking her into an unfit harbour, should be compensated by a further reasonable deduction from the remuneration which the salvors would otherwise receive. Owners have been held entitled to an allowance in this respect, though not distinctly claimed in the pleadings. Atlas. Santafiore. Rosalie. Magdalen. Perla.

1032. Gross and wilful misconduct of the salvors is a proper ground for punishment by partial or total deprivation of the reward to which they would be otherwise entitled for their services, according to the nature and extent of

their offence, and the injury which it may occasion. But the owners must in their pleadings distinctly state any such misconduct on which they may rely. *Atlas. Minnehaha. Magdalen. Wear Packet. Dk. Manchester. Charles Adolphe. Martha. Clarissa.*

1033. Salvors have no right to sell, or deal for their own purposes with, or to retain from the proper custody the ship or property saved. Improper acts of this character have been punished as misconduct. But they have a right, while engaged in the service of salvage, to receive and when necessary to take from the ship's stores, sufficient supplies for their subsistence; and slight irregularities, incident to the nature and circumstances of the service in this respect, have been leniently considered. *Lady Worsley. Houthandel.*

The misconduct of one set of salvors does not affect the right of others who have not misconducted themselves, and that right is not prejudiced by the circumstance of their being joint plaintiffs in the Admiralty with those who have misbehaved. *Neptune.*

1034. It is the duty of the salvors to take the ship or property to the most convenient place of safety, and, when practicable, to that which may be most beneficial for the owners; but unless there is some cogent reason for taking it out of their way to another port, they discharge their duty by taking it to that which is most convenient for themselves, if not too remote for the owners. *Houthandel.*

1035. The salvors should relinquish a vessel which is in need of no further assistance from them, to the pilot who is in charge. *Bomarsund.*

1036. The master and crew of the salvor ship are entitled to retain the possession of a ship saved against the owners of the salvor. *Princess Helena.*

1037. The officers of a public ship have no right to take a vessel or property from the possession of the salvors. *Abbott, 556.*

1038. CONTRACT.—The right to salvage proceeds on the principle of an implied or actual contract.

1039. When a ship or other property is abandoned or cast beyond the control of the owner on the coast or on the billows ; when the ship is driven by the winds in the extremity of distress ; when services are offered and accepted without special agreement, or rendered and not refused, the law implies a contract on the part of the owner to give those who save it such proportion of the property saved, or of its value, as will constitute a reasonable reward for the service. Annapolis and Golden Light.

1040. The master represents, for this purpose, the owner of the vessel, and also the owner of the cargo, and their power to contract for assistance ; he may reject the aid proffered to his vessel ; but although he at first refuse, if he afterwards acquiesce in or receive such assistance, the contract is complete, and the right to remuneration follows. (Persia. Arthur. Theodore.) But the master of a salvor vessel cannot, without their acquiescence, contract for the remuneration of his crew, unless his vessel is dedicated to salvage service. Briton.

1041. The ship talks by signals, with the indistinct signs of colours, with the indefinite language of the cannon and the horn ; such signals are often in their nature, and more frequently from the state of the elements, ambiguous. In such case they are to be construed by the condition of the vessel ; if she requires a pilot, an ambiguous signal is a signal for a pilot ; if she is in danger, it is a signal of distress ; and the signal so construed determines the nature of her contract. Little Joe. Bomarsund.

1042. The contract may be express. It may be for a definite service. It may be for a definite price. A parol contract, if distinct, is as obligatory as one in writing. The latter rarely occurs. Firefly.

1043. If an express contract is fairly and deliberately made, both parties being upon equal terms, both parties are bound by its stipulations. Jan Hendrick. Helen.

1044. It may be hardly necessary to say, that a contract

collusive between the master of a ship and its salvors is simply null and void as against the shipowners. (Theodore.) If a towing vessel contract for her assistance to a ship in manifest danger, she must render the stipulated service, although it be to extricate her from the danger, for merely a towage remuneration, and she must be satisfied with the stipulated reward. *Minnehaha*.

1045. But if a new state of circumstances supervene, and additional services are rendered and accepted, a new implied contract arises to render a reasonable recompense, in addition to, or in substitution for, those on which the parties had agreed.

1046. If there was a material unapparent defect in the vessel, or any concealed circumstance, by reason of which the vessel was in danger, while she contracted merely for a service of pilotage or towage, the pilot or tower, if he rescue her from that danger, is entitled to an additional reward.

1047. If the remuneration contracted to be paid is so extravagant as to indicate manifest extortion, or so inadequate as to indicate imposition on salvors ignorant of their rights, the court will treat it as null, even after the stipulated amount has been paid. *Enchantress*. *Louisa*. *Kingalock*. *Jonge Andrews*. *Silver Bullion*.

1048. When an agreement for remuneration is cancelled by the parties, or treated as null by the court, the remuneration is the same as if none had existed between them. *Africa*.

1049. **RATE.**—The rate of salvage, in the absence of agreement, is a subject of very difficult adjustment. It may be defined as being that proportion of the property saved which will constitute a liberal and reasonable reward for the service of the salvors and the perils they have encountered, in addition to any expense which they have properly incurred. But that which is easy in definition is often extremely difficult of ascertainment, particularly in the conflict of evidence as to the danger and the extent of

the services rendered, which frequently occurs from the confusion in which the services are rendered, as well as from misconception or intentional falsehood ; and that difficulty is frequently increased by the inadequacy of the property to an adequate reward.

1050. Certain arbitrary rules in former times prevailed, and still in some nations prevail, such as allowing half, or some fixed proportion of derelict, to the salvors. But such rules are now in general disavowed, and they are to some extent disregarded even where they are still acknowledged as law. It is said that in some of the States of America the rule is to allow one-third of the value in case of derelict. (Magdalen.) And in England, in cases of wreck or derelict, one-third is generally allowed Abbott, 555.

1051. The remuneration for salvage should be liberal on account of its uncertainty, as well as on account of the other peculiarities of the service. It is not to be measured by the ordinary wages or profits of the persons engaged. Fishermen are not entitled to a less compensation for their assistance because they are persons hired at weekly wages. A usage to that effect is void. John. Hedwig.

1052. We can propose no fixed rule, but reason prescribes certain elements for the decision. To allow the whole thing is contrary to the notion of salvage. When it is of small value, the Crown, or other owner of the right of wreck, may bestow it, as the reward of honesty, on the finder, and to encourage exertions on future occasions ; but salvage implies that a reasonable proportion shall be retained by the owner, and, on the other hand, that the salvors shall be requited as liberally as the property will afford.

1053. Consequently, we must regard both sides of the subject : on the one, the value of the property imperilled, the extent of the danger, and the proportion of it rescued from that danger ; and on the other, the promptness, the energy, the activity, the peril, the intrepidity, the steadiness and good conduct, the skill, even the good fortune and

success, of the salvors, the number engaged, the repetition or continuance of dangers, the length of time occupied, the value of the avocations from which they have been withdrawn, the losses or disappointment of ordinary profit which they may have incurred, whether in their ships, their boats or apparatus, their fishing or other pursuits,—indeed, every circumstance which, in the view of a reasonable man, gives a just title to compensation.

1054. It may be observed that the costs, losses, and expenses, and half the value of the property saved, constitute the maximum, although the property was derelict, except under very extraordinary circumstances. *Inca. L'Espérance. Frances. Reliance. Jubilee.*

1055. Although the rule of allowing half the value of a ship found derelict has been abandoned, yet in such cases the destitute and hopeless situation of the owners' property has been accepted as a consideration for giving a reward more liberal than in other cases. *Magdalen.*

1056. A vessel is derelict when abandoned by her crew for their own safety, although they have left with the intention of returning with or sending assistance, unless it is merely temporarily, as to get her to the shore with or without further aid. But the crew suddenly quitting her and rushing on board a vessel which has come into collision, is not to be regarded as abandonment until they have found it unsafe or impracticable, or have neglected to return. *Perla. Coromandel. Fenix. Aquilla.*

1057. A very liberal compensation is made for the loss and the risk and danger of life of the salvors. *Santafiore.*

1058. When a ship has been rescued from the flames a remuneration has been awarded liberal according to the danger encountered by the salvors; and, consequently, a larger portion of the reward has been ascribed to a vessel and her crew attached to the burning ship than to the vessels free and occupied in transporting the persons and goods from her. (*Eastern Monarch.*) A higher rate is also allowed

when the climate enhances the danger. (Lady Warley.) Promptness and efficiency of the salvage-service are reasons for increasing the reward. Minnehaha.

1059. Allowance has been made to salvors in respect of persons relinquishing their occupation as fishermen while engaged in fishing, and for loss of the salvors' vessel. Catherine. Thomas.

1060. Additional allowance has been claimed in vain by salvors in respect of a foreign master's ignorance of the coast; in respect of their abandoning their intended fishing, when it had in no manner been intimated that they should expect compensation on that account; and it has been refused in respect of risk of loss of the policy of insurance. Abbott, 560. Hedwig. Medora. Deveron.

1061. Steamers have been justly considered to be entitled to a higher rate of salvage than ordinary vessels, even for the same service; not only on account of their greater efficiency in the particular transaction, but also on account of the general benefit which shipowners and merchants derive, and in which each indirectly participates, from the dedication to no inconsiderable extent of ships of that character to the salvage service. Some temporary inconveniences have however arisen, occasionally leading to contests, from the interference which these more powerful agencies have occasioned with the smaller craft, which had previously sought great part of their subsistence from assisting vessels in distress. Kingalock. Enchantress. Alfen. Martha.

1062. The rate of salvage-remuneration is not reduced because the salvors acted under the directions or advice of a naval officer. Persia.

1063. In estimating the amount of the salvage, the value of the ship or other property saved is one of the most important elements. That value is to be taken at the price at which the ship or goods might be sold at the port nearest to which the service of salvage is complete, if that affords a proper market; but if that is not a convenient place for

the sale of such a ship, or of such commodities, then the value must be assessed at their fair selling price at the most convenient proper market, deducting from the assumed produce the expenses of removal and all customary charges and proper discounts and disbursements, but not mere gratuities, although usual. George.

1064. The receiver of wreck for the district is empowered, on the application of either party, to appoint a valuer when any question of salvage occurs. 3 M. S. A. 50.

1065. LIEN.—The salvor has a lien on the property saved for the amount of his salvage. That lien takes precedence of the charges upon a ship by way of bottomry, for the owner of the charge for bottomry has the benefit of the rescue. It takes precedence of wages of the master and crew, of the shipwright's claim for subsequent repairs, and of all claims for necessities. Of the various claims for salvage, that for the saving of human life has precedence, as well in the Admiralty as before the Board of Trade. Gustaf. Bartley. Coromandel.

1066. RETENTION.—The right of lien in general gives a right of retention of the property, and in some cases depends upon such retention. It seems to be considered that at common law salvors possess such right. The right, however, is not lost by relinquishment of the possession. And where there is a proper person to take care of it, particularly where there is an official receiver, it is the duty of the salvor to place the property under his charge. If salvors take possession of such property from the owner after it has been delivered to him by the receiver, the Admiralty will order its release, and compel the salvor to pay the costs of the application. 1 M. S. A. 468. Lady Catherine.

1067. APPORTIONMENT.—The gross amount of salvage earned must be duly apportioned to those who have contributed to the earning of it, and the ships, boats, machinery, etc., employed are all entitled to their fair share. The owners of the ships, boats, machinery, etc., are entitled to



the portions allotted to or in respect of those inanimate salvors.

1068. This apportionment is effected by the Admiralty, but not by the common law courts. The latter leave the salvors, if they can, to settle their proportions between themselves. (*Atkinson v. Woodall*.) If there are several sets of salvors, the first process is to divide the aggregate into as many portions as there are sets entitled. If any set has forfeited its share by misconduct, it remains to the owners of the property, unless other sets have earned it, or a portion of it, by additional good service. If particular sets have rendered greater service or encountered particular danger, as where one boat has attached herself to the burning vessel to take out the crew and cargo, and the others have been free or more remote from that danger in rendering their assistance, those which have rendered the greatest services or incurred the greater danger are entitled to proportionately larger shares of the reward. *Clarissa*. *St. Nicholas*. *Perla*.

1069. A ship is entitled to be considered one of the sets of salvors, although her only service was in carrying out persons to aid in saving. Her reward, however, might not be considerable, and she might perhaps be sufficiently recompensed by a remuneration for loss of time. *Norden*.

1070. The share of each set is then to be subdivided between its constituent members, observing among them also a distinction in respect of any very great differences of risk incurred or services afforded. The expenses incurred by the salvors of the set should be reimbursed previously to proceeding to a division.

The ship or boat takes her share in addition to recompense for injuries sustained or expenses incurred; a steamer takes a larger proportion.

1071. Subject to distinguishing circumstances, the salvor-vessel rarely receives more than half the net salvage; the master half of the residue; and what remains is generally

distributed among the rest of the crew in proportion to their wages, treating apprentices as entitled to two-thirds of the wages of an able-bodied seaman. *Roe. Himalaya. George. Enchantress. Jane. Spirit.*

1072. **REMEDY.**—The remedy for salvage is to some extent secured by an imperfect right of detention, as to which there does not appear to be perfect accordance between the Admiralty and the courts of law. The legal remedy may be obtained by action at law, which is less efficient when the salvors are not agreed as to the division among themselves, particularly if there are several sets insisting upon any other than a rateable division. The more convenient proceeding is in the Admiralty Court, which can attach the property, assess the salvage, and regulate its distribution. In this country there is a local court for the Cinque Ports, and in cases of limited amount jurisdiction is given by statute to justices of the peace. Our observations on this subject must be confined within narrow limits.

1073. The Admiralty has jurisdiction in questions of salvage beyond, when the subject of the question is within, the presidial line. It has a concurrent jurisdiction with the Court of the Cinque Ports, and a concurrent as well as appellate jurisdiction with the justices of the peace. From the Admiralty an appeal lies to the Privy Council. *Louisa. Leda. Argo. Actif.*

1074. The Judge in the Admiralty and the Lords of the Council, in salvage as well as in collision, can avail themselves of the aid of Trinity and sailing masters for the consideration of facts and questions of nautical skill and conduct. *Magdalen.*

1075. It was enacted that the amount of salvage should be determined in case of dispute, if it arose within the Cinque Ports, as formerly; if it arose elsewhere, and the parties could not agree upon an arbitration, and the sum claimed did not exceed £200, by two local justices of the peace; but if it exceeded that amount, by two justices of the

peace, if the parties agreed to refer it to their arbitration, otherwise by the Court of Admiralty in England or Ireland and the Court of Session in Scotland, with a liability on the claimants to costs, unless they recovered more than £200, or the court certified that it was a case proper to be brought before it. 1 M. S. A. 460.

1076. Who were the justices having authority to act depended on the locality of the salvage-service. Their powers and mode of proceeding, the mode of proceeding by arbitration, the appeal to the Court of Admiralty, the mode of payment and appointment, and of enforcing payment of the salvage awarded, are ascertained and provided for by 1 M. S. A. 460-469.

1077. It was held that the 1 M. S. A. 458 and 460, as to salvage and jurisdiction of the magistrates, was limited to the British dominions (Leda); and that the right of proceeding, in cases where the amount in question did not exceed £200, was confined to the jurisdiction of the magistrates, unless there were some special circumstances, such as the vessel being in the custody of the court on an anterior claim, or the master's refusal to go on shore and submit to the jurisdiction of the magistrates, and removing his vessel from the limits of their authority before the salvors could with reasonable diligence apply to them. *Atkinson v. Woodall*. Cuba. *Argo*. Alpha. John. Minnehaha.

1078. The provisions contained in 1 M. S. A. 460-469, were amended (by 3 M. S. A. 49) by extending the jurisdiction of the local magistrates to all cases in which the value of the property saved did not exceed £1000, and to cases of salvage in which the salvage-service was rendered beyond the limits of the British dominions, and by various directions as to the selection of the justices, their jurisdiction, and procedure.

1079. The Court of Appeal will vary the order of the inferior court as to the amount of salvage, when it is either extravagantly large or altogether inadequate, but not on a

mere question of adequacy or inadequacy within moderate bounds. Cuba. Clarissa. Messenger. Harriett.

1080. The costs are to some extent in the discretion of the court; they are in general given to the salvors, if the tender of the owners is insufficient, and refused to them if they have refused a tender of an amount found adequate (Hopewell. Favorite), and given against them if they have refused a very liberal reward (Nicolai. Hedwig), or if the amount awarded to them is less than two-thirds of the demand. Seine.

1081. If two sets of salvors sue, and one occasions vexatious costs by its mode of proceeding, the court will protect the owners against such costs (Bartley) at the expense of the offending party.

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## CHAPTER V.

### SLAVE-TRADE.

1082. SOME writers found general law upon practice,—the law of nations on their practice, as indicating a general accord. The law affecting slave-trade is part of the law of nature, and not in all its departments a portion of the law of nations; but if law is established by practice, the trade in slaves, in the capture, sale, and purchase of our own kind and kindred, is in perfect accordance, and is unquestionably established as consonant, with natural law.

1083. From north to south, from east to west, from the most remote antiquity to a comparatively recent period of history, every faith,—Brahmin, Buddhist, Heathen, Jew, Christian, Moslem; every country,—Scythia, Ancient Britain, China, India, Batavia, Persia, Egypt, Assyria, Israel, Greece, Rome, Carthage, Russia, France, Spain, Portugal,

Italy, England, have, by their incessant practice, established the legality of the traffic in the human race.

1084. No inconsiderable portion of the trade carried on by the caravans, which traversed Asia from the earliest times, consisted in the purchase and sale, and occasionally, as they travelled along, in the capture of slaves.

1085. The trade in the Euxine involved the barter of the commodities of India and the East for the slaves which the Cimmerian and Scythian traders brought to its marts.

1086. Egypt and the Mesopotamian nations teemed with captives, sometimes sold or exchanged for others less likely to disturb the peace. At times they were transported by cities from one conquered region to another, so that by intermixing the new settlers with the former inhabitants both might be controlled.

1087. A principal part of the exports of the Britons and Saxons to the Continent consisted of the captives taken in internal wars. British slaves were admired and appreciated, and sold well in the Christian slave-market of Rome.

1088. There is no asserted right of belligerents as to enemies or neutrals, against which we shall have occasion to protest, which can appeal for its support to one-hundredth part of the authority of practice which can be adduced in support of the unrestricted dealing in slaves. If it be permitted by the law of nature, it is permitted to every one not prohibited by his municipal law to deal in human flesh and blood.

1089. But whatever names may have sanctioned the practice, whatever nations may have adopted it, nature rebels against the doctrine, and proclaims its asserter a recreant against her laws.

1090. We must not however be transported by feeling, or satisfied that denunciation proves the offence. The objections to slavery are not found in the ancient books; they have sprung from the sentiment of freedom, the development of reason, and the more generous spirit of modern

times, and modern nations are more competent to admit them.

1091. To deal usefully with the question, it is vain to resort to the captivating phrases of the thousand-and-one preachings about equality, the rights of freedom and locomotion, and Christian doctrines, for they do not apply. The Christian Scriptures do not denounce slavery, but accept it as an established condition, and teach all men to implicitly submit and obey. The abstract rights of equality, freedom, and locomotion are unquestionable. But while war exists,—and who shall suppress it?—while the virtues and the vices concur in exciting the intellects and the energies of men, while industry and science, and ambition and avarice urge the human race, the enjoyment of abstract rights is controlled by countless impediments. The ill-trained in mind can neither morally nor physically appreciate or enjoy freedom, when or wherever let loose. The poor cannot enjoy locomotion beyond the limits within which, or freedom, except subject to the conditions on which, a subsistence can be gleaned. The question is not as to the existence of natural rights, but whether, and under what circumstances, and to what extent, if at all, the law of nature justifies any in restraining or impeding the enjoyment of them by others.

1092. The justification has been sought in the real or imaginary rights of war. The pretence for the enslaving and selling of fellow-creatures rests on the unrighteous proposition, asserted even by modern authors, that by the right of war a man may kill his enemy or sell him as a slave. There is no such right. We shall deal with the limitation of the right to kill the enemy on another occasion, observing only that it is limited to the necessities of warfare. These necessities may involve a right to retain or to place a prisoner in a state of slavery; but that does not establish the right to sell him as a slave.

1093. It is not until a nation is strong, and possessed of

considerable wealth, and until the spirit of civilization has spread among the people, that captives can be retained in custody by a prison, or by the obligation of a word. Until then, the necessities of self-defence attach incidents to warfare which cease in a better condition of nations. The extent of the necessity is from time to time the measure of the right.

1094. A nation which has no prison in which to retain its captives, and which can afford them no subsistence, except such as may be earned by their labour, is entitled to employ them, or to deliver them to others who will employ and maintain them, at least until the danger is past. It is by such means only that they can be rescued from the sword or starvation. Those who receive the captives are entitled to reasonable services as the compensation for the maintenance and protection they afford. What may be the just limits of the rights of such protectors must depend upon ever-varying circumstances, into which it is unnecessary to inquire.

1095. But whatever the right of such protectors or of such captors in war, although a state of slavery is produced, the material element is wanting which constitutes traffic in slaves. That element is price—payment. Unless they can be sold, the captives are generally an encumbrance to such captors, and constitute no inducement to war; but when they can be converted into articles of commerce, they become things worth stealing, valuable plunder, to be acquired by inroads and wars, by hunts and forays more iniquitous than open war; the warriors and the thieves who perpetrate these enormities become the hirelings of the miscreants who open a mart for the purchase of the commodities which those enormities produce.

1096. Nor is war the only source of the traffic. The urgent necessities and barbarous tastes of some peoples, living in an uncivilized and precarious state, induce them to accept the proffered purchase-money for the blood of their

own children, and, perhaps, to persuade themselves that by the horrible barter the condition of their victims may possibly be improved.

1097. It is beyond our purpose to inquire into the deportation of slaves from Africa to the West, its original cause, the means by which the unfortunate creatures are procured, the mode in which they are treated, or the increase of misery which has been occasioned by the injudicious methods adopted for the abolition of the trade.

1098. The capture and enslaving of the people of a peaceful nation is an atrocious violation of international law ; but the dealing in slaves is not an offence against international law. The buying and selling of slaves by the subjects of one nation, or between the subjects of two nations, is a matter with which a third has no right to interfere, unless the transaction occur within the ambit of its municipal law.

1099. The slave-trade is an offence against the law of nature, but it is not punishable unless committed within the range of some municipal law, which has declared it an offence and prescribed a penalty.

1100. The first law of which we are aware against this nefarious traffic was passed in Venice, in 864, but its inefficiency required a more stringent measure. In 878 it was declared criminal for a Venetian to permit any slaves to be received on board his vessel.

1101. It has been described and treated, by a strange application of the word, as piracy by the laws of the United States of America, and of England, Denmark, and other European nations, but that does not constitute it piracy, punishable according to the law of nations. It can only be punished according to the law of the country in which it is committed, or to which the offender belongs. (*Diana. Antelope. Madrazo v. Willes. Buron v. Denman.*) But foreigners committing such offences within its jurisdiction are liable to the municipal law. *Del Campo v. The Queen.*



1102. The English statute, 5 Geo. IV. c. 113, s. 2, declared it unlawful, except in certain cases, for any person to trade in slaves, or persons intended to be dealt with as slaves, or to convey any persons to be dealt with as slaves, or to import, or to contract for importing, into any place, slaves, or persons to be dealt with as slaves; or to ship, tranship, embark, receive, detain, or confine on board, or to contract for the shipping, etc., on board of any vessel, of slaves, or persons conveyed to be dealt with as slaves; or to fit out, man, navigate, equip, dispatch, use, employ, let, or take to freight, or on hire, or contract for the fitting out, etc., any vessel for any such objects or contracts; or to lend money, or to enter into security, or to engage in partnership, or otherwise, for any such purposes; or to take the charge or command, or to navigate, or enter, or embark on board any vessel, as captain, officer, servant, or in any other capacity, knowing that the vessel is to be employed for such purpose; or to enter into any contract of insurance in respect of such objects. And by 6 & 7 Vict. c. 98, it is enacted that all the provisions of the 5 Geo. IV. c. 113, shall extend to all British subjects, whether residing within the British dominions or in any foreign country.

Persons engaged in dealing in slaves are subjected to a penalty of £100 for each slave. 5 Geo. IV. c. 113, s. 3.

The vessel employed in such occupation, with all her boats, guns, and furniture, and everything on board belonging to her owners, is forfeited (s. 4).

The dealing in, or conveying slaves on the high seas, or in any haven, river, creek, or place where the Admiral has jurisdiction, is piracy, felony, and robbery, and punishable with death (s. 9).

Petty officers and seamen serving, or contracting for service, on board a vessel for such purposes, are guilty of a misdemeanour, punishable with two years' imprisonment (s. 11).

Bounties are allowed for the capture of slaves (s. 25).

This Act contains eighty-two sections, of which it is un-

necessary to cite more in this treatise, or to state more than that they contain various exceptions, some no longer applicable since the abolition of slavery in the British colonies, penalties for acts collateral to navigation, rewards for information of the illegal objects of the vessel, and modes of procedure; indeed, it is a consolidation of the laws for the abolition of the slave-trade.

1103. The punishment of death for piracy, except when murder is attempted, is, by 1 Vict. c. 88, ss. 2, 3, commuted to punishment by transportation for life, or not less than fifteen years, or imprisonment not exceeding three years. And by 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3, penal servitude is substituted for transportation.

1104. The Act 2 and 3 Vict. c. 73, authorizes any person in Her Majesty's service, under the authority of the Lords of the Admiralty, or any one of the Secretaries of State, to detain and capture vessels engaged in the slave-trade, and the slaves on board, and to bring them for adjudication before the Admiralty, or any Vice-Admiralty court, as if the vessels and cargoes belonged to British subjects; providing that no such court should condemn any vessel, if the owner should establish to its satisfaction that she was entitled to claim the protection of any flag other than that of Great Britain or Portugal. It indemnified persons acting under such authority, provided for the mode of trial, and the circumstances under which vessels might be seized, declaring such circumstances *prima facie* evidence of employment in the slave-trade, and directed the condemnation of the ship and cargo to the Crown, unless the owner could prove the lawfulness of her purposes and outfit.

The circumstances authorizing such seizure and condemnation are, if there shall be found any of the things hereinafter mentioned; that is to say,—

Hatches with open gratings instead of the close hatches which are usual in merchant vessels. Divisions or bulk-heads in the hold or on deck more numerous than are neces-

sary for vessels engaged in lawful trade. Spare plank fitted for being laid down as a second or slave-deck. Shackles, bolts, or handcuffs. A larger quantity of water in casks or in tanks than is requisite for the consumption of the crew of the vessel as a merchant vessel. An extraordinary number of water-casks or of other vessels for holding liquids, unless the master produce a certificate from the Custom House at the place from which he cleared outwards, stating that a sufficient security had been given by the owners of such vessels that such extra quantity of casks or of other vessels should only be used for the reception of palm-oil, or for other purposes of lawful commerce. A greater quantity of mess-tubs or kids than are requisite for the use of the crew of the vessel as a merchant vessel. A boiler of an unusual size, and larger than requisite for the use of the crew of the vessel as a merchant vessel, or more than one boiler of the ordinary size. An extraordinary quantity either of rice or of the flour of Brazil, manise or cassada, of maize or of Indian corn, or of any other article of food beyond what might probably be requisite for the use of the crew; such as rice, flour, maize, Indian corn, or other article of food not being entered on the manifest as part of the cargo for trade. A quantity of mats or matting larger than is necessary for the use of the crew as a merchant vessel.

1105. On an appeal from the sentence of a Vice-Admiralty Court, decreeing forfeiture of a ship and penalties on the shippers, under 5 Geo. IV. c. 113, it was held that the captors, to support the condemnation of the ship, must prove that her owners knowingly and wilfully employed, or permitted her to be employed, for the purpose of conveying slaves; and that, to support the decree for penalties against the shippers, they must prove that the shippers knowingly and wilfully shipped the goods on board her to be so employed. And it was further held that the parties implicated, if known, must be cited by name in the monition of the court to show cause against the forfeiture and penalties

imposed by an Order in Council, issued under 2 and 3 Will. IV. c. 51; and that no sentence for penalties could be pronounced against individuals on a general monition. New-port. *Barton v. The Queen.*

1106. If a ship equipped for the slave-trade come within British waters, she is subject to punishment, although the owner is the subject of, and resident in, another country. *Del Campo v. The Queen.*

1107. No goods on board, except those belonging to the shipowner, are liable for his or the master's offence. *Del Campo v. The Queen.*

1108. The penalties are joint; the owner and master are subject to one penalty, and not two, for receiving prohibited goods on board. *Del Campo v. The Queen.*

1109. If a ship is fitted out with articles for the slave-trade, she is within the prohibition of the statute, although it does not appear that she is to carry back slaves in return. *Regina v. Zulueta.*

1110. According to the law of nations, the armament of one Sovereign has no more right to board and search the merchant ship of another, for the purpose of finding or liberating slaves, or of punishing the people of the ship for carrying them, than it has to land on his coasts to search his village for the purpose of finding and taking away stolen sheep, and hanging the inhabitants for having such animals in their possession. *Buron v. Denman.*

1111. By treaty such rights may, on grounds already explained, be acquired with or without qualification or restraint; concession may even extend to the power of punishment within the limits imposed by the laws of the respective countries to which the captor and the guilty vessel belong. The punishment must not exceed the narrowest of those limits, for the offender is not legally criminal beyond his offence against his own law, and the tribunal of the captor's country cannot visit the offence with a greater punishment than his law has prescribed. The investigation and sentence ought

to rest with the tribunals of the country to which the offender belongs. It is sometimes committed to mixed tribunals constituted by the contracting nations. In England, the subject is in some minds affected with a sentimentality bordering upon the insane, which has led to aggressions on the rights of other countries even in the language of her laws. That of 2 & 3 Vict. c. 73, s. 3, exceeds the normal bounds.

1112. The limits of this Work will permit us only to mention that the slave-trade was generally condemned by the Treaty of Paris and by the Congress of Vienna.

1113. England has been the concoctor of treaties for its suppression. Those made by the Crown have been confirmed by Act of Parliament, and, among others, the 7 & 8 Vict. c. 26, has given a limited authority to the Crown to complete such treaties and to carry them into immediate execution.

The statute 5 Geo. IV. c. 113, confirms treaties and conventions previously made with Portugal (22 January 1815; 28 July, 1817; 15 March, 1823) and with Spain (23 September, 1817; 10 December, 1822) and with the Netherlands (4 May, 1818; 31 December, 1822), and prescribes the instructions to be given to the officers of British, Portuguese, Spanish, and Netherland ships, and the constitution of the mixed courts for the trial of offences.

In 1831, and 1833, and 1845 conventions were entered into between France and England as to mutual limited rights of search, and the instructions to be given to the officers of the French and English ships.

In 1826 and in 1835 conventions were made with Brazil, which were directed to be carried into execution by 8 & 9 Vict. c. 122. The Brazilians thought that the English, by this statute, exceeded the just limits of legislation as between independent nations. The Portuguese thought that the English exceeded those limits by the Act of the 2 & 3 Vict., to which we have already referred.

In 1841 England made treaties on the subject with Austria, Prussia, and Russia, confirmed by statute 6 & 7 Vict. c. 50.

In 1849 the English made a treaty for the suppression of slavery with Syed Syf ben Hamood, chief of Sohar, in Arabia, confirmed by 16 Vict. c. 16.

In 1851 the English made a treaty with the republic of New Granada, confirmed by statute 16 Vict. c. 17.

In 1853 the English made a treaty with certain chiefs of the Sherbro country, near Sierra Leone, confirmed by statute 18 & 19 Vict. c. 85.

On the 7th of April, 1862, the English made a treaty with the United States of America, confirmed by statute 25 & 26 Vict. c. 40.

In fact, England has made treaties on this subject with almost every emperor, king, republic, prince, emir, sheik, and other petty potentate in the world. See 1 Phil. 318-334; Whea. 186, 192; and the almost annual volumes of Hertslet, in which these conventions are contained.

1114. By some of those treaties modified co-operation of the contracting parties in the suppression of the slave-trade is stipulated, and joint modes of action are prescribed; the English have endeavoured to obtain, but other nations have been unwilling to concede, the unlimited right of search. The countries against which it was formerly exercised by the English and French remember, that one of the greatest perils of the mariner was this right of search, and deem even protection against the pirate too dearly purchased by the concession of that right.

1115. Although a country has prohibited the slave-trade, and granted to another country the right of search, it is not competent for the tribunal of the country to which that right is conceded to condemn a slave-ship as prize, at least, unless both her own law and the treaty subjects her to confiscation. Antelope.

## CHAPTER VI.

## SMUGGLING.

THE unlawful dealing in goods prohibited or subjected to duties by the revenue laws.

1116. According to the general laws of commerce, every man of every nation has a right to buy and sell his goods from and to whom and where he will, and to convey them to or from the port of his own or any other nation. But every nation has the right of levying for its exigencies on its own subjects, and all persons who come within its dominions, such taxes and other duties as it may deem necessary, and in such manner as it may deem meet. Foreigners therefore within the nation are liable to its revenue laws. But no country concerns itself about the revenue of any other, or its mode of collecting or enforcing its customs or taxes, except so far as may be expedient for its own commerce, and as may be stipulated by mutual conventions.

1117. In the absence of such convention, no foreign country aids another in enforcing its revenue law.

1118. The violation of revenue law is not a breach of the law of nations, nor is it the breach of the law of nature; it is immoral only inasmuch as it is an offence against the law of one's country, which every man ought to obey, but it is liable to no punishment, except that which the law prescribes. It is, then, in every nation the subject of its own municipal, and of no other law.

1119. Although the mariners of each of the opposite countries are entitled to the convenient use, for navigation, of the whole breadth of the channel of narrow straits and seas, the vessels of the one navigating within that portion which constitutes the marine territory of the other, are subject to its revenue laws, as indeed are the ships of any country within the waters of a foreign state.

1120. As a general proposition, no vessel on the open sea is liable to search, by the ship of any nation except her own, on the suspicion of offence against the revenue laws.

1121. Nations however claim, and to some extent concede, to each other a degree of jurisdiction on the sea beyond the presidial line, for the protection of their revenue. The United States asserted such a jurisdiction by the Act of Congress of 2 March, 1799, the English by the hovering Act, 9 Geo. II. c. 25; and by the 16 & 17 Vict. c. 107, the English assumed to deal with vessels on the open sea, in a mode which, except so far as it is warranted by treaty or acquiescence, is, with respect to foreigners and their property, hardly reconcilable with international rights.

1122. This Act is, with the 23 Vict. c. 22, and 25 & 26 Vict. c. 63, a consolidation of the law relative to the customs, and contains numerous provisions, in no less than sixty-four sections, for the prevention of smuggling. We have space only to refer very briefly to the more material of those which particularly affect the conduct of the ship.

1123. Vessels and boats not exceeding 100 tons are placed under the regulation of the Commissioners of Customs, as to their tonnage, build, and description, the limits within which they may be employed, their mode of navigation, the arms they may carry, and various other particulars (s. 199-207). Such vessels, if used in the importation, removal, or conveyance of uncustomed or prohibited goods, are liable to forfeiture (s. 203), as are all vessels, belonging wholly or partly to British subjects, having false bulkheads, false bows, or other places in which goods can be secreted, or devices for running goods (s. 208).

1124. This Act declares liable to forfeiture any ship or boat, wholly or in part belonging to a British subject, or of which half the persons on board are British subjects, found to have been within four leagues of the coast, between the North Foreland and Beachy Head, or eight leagues of any other part of the United Kingdom, and any foreign ship or



boat having a British subject on board, within three leagues of the coast of the kingdom, or any foreign ship or boat within one league of the kingdom, or any ship or boat within one league of the Channel Islands, having on board spirits, tea, tobacco, or certain other specified articles liable to duty, in such small cases or parcels as therein mentioned; also vessels of the like description, of the cargo of which any part is thrown overboard to avoid seizure; and also all vessels arriving in the ports of the kingdom having prohibited goods on board (ss. 212, 213, 216).

1125. This Act also declares forfeited any ship or boat, wholly or in part belonging to British subjects, or of which half the persons on board are British subjects, which, within 100 leagues of the coast of the United Kingdom, on the signal from a vessel of war or the Revenue service, does not bring-to, and if, being chased, any part of her cargo is thrown overboard or destroyed; and it declares that all persons escaping from the vessel during the chase shall be deemed British subjects, unless the contrary is proved (s. 217). And ships of war and of the Revenue service are authorized, after exhibiting a proper pendant and ensign, and firing a signal-gun, to fire upon any such ship as shall not lie-to for the purpose of search (s. 218). Any persons shooting at any vessel or boat of the Navy or of the Revenue service within 100 leagues of the kingdom, or maliciously shooting at, maiming, or wounding any officer of the Army, Navy, or Marines employed in the prevention of smuggling, or any officer of the Customs or Excise, is declared guilty of felony (s. 249). Ships and boats employed in the removal of goods liable to forfeiture are declared forfeited (s. 219).

1126. The officers of the Army, Navy, Marines, and Preventive Service, are authorized to search any ship in a British port for uncustomed goods (s. 219).

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## CHAPTER VII.

## THE LAWS OF WAR.

1127. WE now approach the miserable and desolate region of war. The sunshine of peace still lingers upon the devoted countries, but black clouds are lowering, and throwing their shadows across them. Two mighty nations are gathering their strength. The hills are white with tents, and glittering with the panoply of battle. The drum and the clarion sound through their limits, calling the myriads to their standards. The roar of the engines, and the noise of the hammers, inform us that the arsenals are in fast and hurried employment. The ships are stealing by ones and by twos into the harbours, where hundreds are already assembled, or steering forth in squadrons suspiciously to unknown destinations. There is still menace, protest, asseveration. The buccaneer captains are calculating their resources, arming their fast schooners, collecting their ruthless retainers, preparing for murder and rapine with commission or letter of marque, or without. The citizens and husbandmen of the angry countries, and the merchants of the peaceable nations, in groups and in councils, in amazement and pale consternation, inquire when havoc will begin? what are the rights of neutrals? what are the laws of war? how the bristling belligerents will accept them? and how even their version will be observed? what will be the limits of ravage, of carnage, and conflagration? what the pretences for capture and plunder? whether their ships and cargoes will be confiscated, or whether they will only be sold to pay the costs of acquittal, and the expenses of detention?

1128. What are the laws which are to insinuate themselves in whispers while the cannon are thundering around them?—especially, what are those laws so far as they regard the wanderer upon the sea?

1129. There are whispers which affect the hearts of men, there are spectres which haunt their consciences even while they deal the thunderbolts of battle. Their vaunts, their manifestoes, their proclamations cover with a transparent veil their atrocities, even while they commit them. We must search the heart and the conscience for the dictates of reason, and not be guided by the acts which they perpetrate in passion. We must endeavour to mollify their ferocious sentiments, and make them amenable to the arbitration of nature, and teach them what reason has prescribed as the laws of war.

1130. We must consult history for its occurrences ; we must consult the prize courts for events, and watch how partiality has quailed under a sensation of justice, and concealed itself in precedents and quotations.

1131. We cannot learn science from barbarians, or civilization from savage hordes. We can learn little from conquerors who set forth to ravage and subdue. We must not be content with the authority of legists, who, rejecting the worst, and selecting the least objectionable of violent precedents, have founded upon them improved and progressively improving systems ; resting there, because their contemporaries were unprepared for further advance.

1132. The laws of nature, and among them the laws of nations, are not of the ordination of man, they are the prescriptions of the Great God ; they are active principles, which, by methods beyond our comprehension, inscrutable to our intelligence, work their own course, and achieve their, to us unintelligible, designs.

1133. Because it has not been enunciated in thunders or written in letters of light, because there has been no Amphictyonic council to proclaim it, because the nations are not confederated to maintain its decrees,—let not any state, in the pride of its power, believe that there is no avenger, that there is no chastisement for the violation of international law. The Avatar will assuredly come, and

vengeance will be inevitably dealt by insulted Nature on those who transgress her law. Let him who dares to doubt it look around. Let those who invoke the horrors of servile insurrection expect a terrible retribution.

"He who holds no laws in awe,  
He must perish by the law.

Ay de mi Alhama."—Byron.

1134. War, in his least terrible aspect, is an invader of the domains of nature; but we must allow the monster some prerogatives, that we may control, as we cannot enchain him.

1135. The human intellect and human sentiment are not adapted to Utopia; we must admit that the privileges which reason reluctantly concedes to war are not inconsistent with, and even that they are to be treated as within, the ambit of the laws of nature. But there are sanctuaries which war dare not violate; there are still Elean regions which it may not profane.

1136. THE LAWS OF WAR involve a fourfold consideration:—First, the law of nature; secondly, the rights as between the belligerents; thirdly, the law of nations as between the belligerent and the neutrals; and, fourthly, the policy of all or any of these parties.

Policy will not justify the violation either of the law of nature or of the law of nations, or a transgression of the rights of the antagonist or neutral; but it authorizes a departure by a nation on its own part from its extreme assumptions against others, although it may operate to its advantage and to the detriment of the opponent.

1137. To illustrate these propositions:—First, there are transgressions against the law of nature which are not transgressions of international law; for instance, if one of the belligerents sell his prisoners of war as slaves, it is not a breach of the law of nations. Yet a nation sensitive on the subject would have at least as good a right, if it thought fit,

to found a war upon the offence, as the belligerent had to commit it. A fourth nation could not have a better ground of complaint against the sensitive than against the offending nation.

1138. Again, a belligerent, deeming it for his advantage, commissions privateers for the ransacking of neutral vessels suspected of breaking blockade, or carrying contraband of war, or he treats innocent cargoes as contraband. This is a violation of the law of nations, and not merely such as to entitle a nation of peculiar sentiment to treat it as a cause of war, but it is such an infringement of international rights as to impose on all neutrals a duty, controlled only by the consideration of their own interests or danger, to concur in chastising the offender.

1139. Thirdly,—A belligerent excites a class of the subjects of its adversary to domestic treason, to pillage and massacre their masters and their families. This is an outrage on the rights of war, as well as a crime against the laws of nature. As an excess of belligerent rights only, irrespective of its moral atrocity, it not merely gives to neutral nations a right, as in the case of selling the captives, but it imposes on them an obligation, to make war upon the offender. For if such violations of the rights of the enemy are permitted to pass unpunished, it imbues war with a barbarism, a brutality and perfidiousness of character which may prove destructive in the future wars of other nations. All are interested in restraining the lapse of each into the savagery and demoralization which damage the interests of the great commonwealth, of which all the despotisms and monarchies, as well as republics, are members.

1140. These duties and obligations are not so imperative as to require the neutral nations to sacrifice the lives and properties of their own people, at least by premature interposition; they confer the right, with an imperfect obligation at a proper time and under convenient circumstances to enforce it. But it is a principle that no nation is bound,

except by treaty, to involve itself in war against its own interests or inclination.

1141. The law of nations is founded on the principle of universal convenience and utility; it is that rule, the observance of which is most beneficial for all nations, and the peoples of all nations,—the weak equally with the strong.

1142. We must not be misled by the legists of any particular country, or the conduct of any particular country, although it be our own; nor may we assume that it has been justified in acting on what, in the pride of power, the spirit of revenge, the agonies of desperation, or the delirium of victory, it has dared to enunciate as international law.

1143. "The present public law of Europe" (says Sir W. Molesworth) "has derived its origin from two distinct sources: partly from those abstract notions of what is right and just, which form what is termed the law of nature; partly from the usage and customs of nations in their intercourse with each other. It is evident that those rules of the present public law of Europe, which are based upon correct notions of what is right and just, cannot require amendment. Not so those rules of the present public law of Europe which have been founded on custom and usage, for the custom and usage of nations, especially with regard to war, have frequently been at variance with correct notions of what is right and just; and the *jus belli*, which has been chiefly founded upon custom and usage, has differed in different nations, and in different sets and families of nations. It has varied in the same nation at various periods of its history; it has changed with the change of the religion, manners, and institutions of a nation."—Debate on Neutral Rights in the House of Commons, 4th July, 1854. Wheaton, 649.

1144. The law of nations, then, is that law which ought to prevail, not the practice which may happen to prevail, or it would ever vary according to the caprice of the nation which from time to time attained a predominating influence.

1145. To form a correct judgment as to the law which

ought to prevail, we must regard all nations as of equal power, possessing equal rights, equal intelligence, equal interest in the observance of the law, and equally prepared and determined to vindicate their rights, and to repel every inroad upon them. To assume the contrary would imply that the strong has a right to impose a law on the weak; and not only to impose, but to vary it at his pleasure. From our proposition the inference will necessarily follow, that if one violate any common right, the others, being involved indirectly in the injury, may and will combine to repress the aggression.

1146. Thus, assume that the nations are twelve. The rights of all are equal. Two of them engage in war with each other. Neither of them has any right to alter the relations of the other ten with its antagonist. The neutral must act as if the war is justly entered upon by both parties, otherwise he may become involved in the conflict. The two nations must be regarded therefore by the neutral as entitled to quarrel with each other. But what right has either to dictate to a neutral nation an alteration in her conduct towards his opponent? Each of the ten is in amity with each of the belligerents, or it is not neutral; it must not render military assistance to either, or it ceases to be in amity with the adversary. For its own safety the neutral must keep aloof from the blows which the belligerents deal against each other.

1147. But anything beyond this is not a right which the belligerent acquires against his friend, who is also the friend of his enemy, but a concession which the neutral grants to each of her quarrelsome acquaintances to avoid the suspicion of being partial.

1148. The ten equally powerful nations will, for peace' sake, sacrifice to the belligerents so much, but only so much of their intercourse and commerce, and tolerate so much, and only so much interference with the pre-existing rights and relations between each other and the belligerents respectively, as are indispensable to the proper conduct of war.

1149. If either belligerent trespass further on the rights of any neutral, it is a challenge, a defiance, an insult, an injury, on which not only that neutral may justly found a war, but on which he is entitled to call upon all the other members of the commonwealth of nations to repel the insult and punish the crime. On the hypothesis that they are of equal power with the offender, and jealous of their rights, his destruction is inevitable unless he discontinue his offence.

1150. Some doctrines are firmly and universally established, and generally, if not universally, observed; others are so far established as to be generally observed when undisturbed by some strongly exciting cause—some jealousy, suspicion, or affront; others are less settled, through want of generality of acquiescence, or the conflict or dissimilarity of interests, or supposed interests; others have hardly yet been recognized by nations of sufficient power.

1151. In many cases a kind of positive international law is introduced by treaty, as the assumed or substituted law of nature and nations between the parties to the convention. These are laws of contract, dependent upon good faith for their observance, and for their vindication on the uncertain appeal to arms.

1152. These contracts differ often according to the relation of the contracting Powers; so that the supposed international law,—or rather the substitute for international law,—between nation A. and nation B., on a particular subject, may differ from the supposed international law, or the substitute for international law, between the same nation A. and nation C. on the same subject.

1153. As the real interests of nations have become better developed and understood, and the oracle of reason is more and more consulted, these anomalies diminish, and treaties and conventions gradually come to be more just and accurate expositions of law.

1154. It is not within the compass of such a Work as this to pursue the chequered progress of reason and civili-



zation through the treaties, rendered innumerable from their frequent violation,—every war requiring, or being supposed to require, a renovation, partial or complete, with or without additions, deductions, or alterations. Our remarks on these subjects will be necessarily few, and confined to such as seem to have permanently affected the acceptance of the general law.

1155. It may be asserted as an incontrovertible axiom, notwithstanding the prevailing inclination to contravene it, an axiom as beneficial for the strong as for the weak, that as no profit can compensate to an individual an act of falsehood or dishonesty, for thereby the foundations of his welfare are undermined; so no benefit which a nation can acquire will compensate for the violation of national honour or the breach of national faith, for thereby the foundations of her welfare are equally disturbed.

1156. The impartial jurist cannot regard without a smile the criminations and recriminations of the advocates of the piratical prize-courts of France against the piratical prize courts of England, and of the advocates of the piratical prize-courts of England against the piratical prize-courts of France; or the simple delusions of writers of each of these two countries in believing that the honour of their respective nations is involved in the perpetuation of a controversy,—as to the English Orders of Council, and the Berlin and Milan decrees,—which is only a perpetuation of national disgrace. That the jurists of neutral countries should not have condemned both with the severity of a just indignation, and that the most, by which their countrymen were most plundered, would have been unaccordant with the nature of man. That the American legist, who derived his municipal jurisprudence from England, and was imbued with the maritime sentiment of the Saxon, and inspired with the hope that the navies of his country would in revolving years ride triumphant on the ocean, might have regarded with some leniency the appropriation of its

supernatant products, was consonant with a sentiment latent in his disposition; but even he could not tolerate such proceedings. That they who enter on such controversies should appeal to the prize-courts, which they have reciprocally denounced, as the arbiters of the law of nations, must astound the philosopher, and provoke the ridicule, or exasperate the feelings, of the shipowner, the merchant, and all who travel on the sea.

1157. Some writers on these subjects have for the most part been bred, others more or less educated, in this prize-condemning arena. The first are incapable of, the second have been restrained from, entertaining broader views. We are not more bound to obey the dictates of the two or three judges whose eloquence and ingenuity have given grace to the atrocity of their judgments, than the dictates of their inferiors, whose decisions, for want of such adornment, shock our sense. If to the prize-courts you appeal, the prize-courts are your tribunal; you cannot single out this prize-court and reject another, you thereby annul your authority. We will confront you with the prize-court of Jomsberg,—a nest of acknowledged pirates: they executed the Scandian law;—we will confront you with the decisions of the French prize-courts, which you condemn as atrocious; and the Frenchman says, and with truth, “Your English prize-courts exhibit almost equal atrocity.” If you assume to distinguish between prize-courts and their adjudications; if you assert that the decisions of this are more worthy than the decisions of that, you appeal to a higher authority; you appeal to reason, and annul the authority of the tribunals of your choice, for you accredit their decisions only according to their consonance with reason. Then appeal at once to the tribunal of reason,—the supreme court.

1158. It is absurd to say that prize-courts are, or ought to be, international tribunals. They ought to be, but they are not. They obey the mandates of their sovereigns, and

decide according to Orders of Council. They pretend, with the pomp and casuistry of language and learning, to pronounce judgments unaffected by such orders,—but they find excuses for obedience; and however repugnant, and though confessedly, repugnant to international law, such orders are invariably obeyed. Did not the French prize-courts execute the decrees of Berlin and Milan? Did not Lord Stowell execute the English Orders of Council, confessing that they were an outrage on the law of nations, committing crime because it had been perpetrated by others. Was the Norwegian, the Dane, or the American guilty of the imperial ordinances? Yet, because he was bid to do so, he confiscated the Danish, the American, and Norwegian vessels. Is such the arbiter of the law of nations? and this is one of the best examples of such authorities.

1159. Then we are to appeal to the older writers, and we do appeal to them; and with infinite respect we appeal to Hugo Grotius, the first civilizer of nations; we appeal to the principle on which he founded his theory, and instituted a scheme mitigating the barbarities of warfare by indirectly appealing to reason, by selecting the precedents most accordant with reason, and repudiating those of which he disapproved. But are we to leave his work unfinished? He dared not to rely upon principles; the age was unprepared. By his process he achieved what was otherwise unattainable. He, like Bacon, was the pioneer and indicator of a system which remained, and still remains to be completed; but reason was his guide: we appeal, then, from his precedents to the rule by which he chose them; he would have rejected many, had history afforded him better. To his successors we appeal; but we must try them, as they tried the precedents, by the criterion of reason. We are remitted, then, from the text-writers to the sovereign tribunal of reason.

1160. Then we are to appeal to diplomatists and treaties, and to them we do most respectfully appeal; to statesmen

and the productions of statesmen, of broader views than the prize-court lawyers, more practical than the writers of text-books; but we must be ever watchful of their selfish policy, and keep in view the interests and sentiments of their particular states. They are advocates at the head of armed forces, each for establishing his own propositions, assuming, as laws more or less generally acknowledged, those most in accord with his interests, and pointing occasionally to his battalions as he pleads. Mark the specious cunning of the belligerent minister when he would fain persuade a neutral to violate the immutable law of impartiality in his favour. Read the reply of Count Bernsdorf (3 Phil. 339), worth all the judgments of Stowell, Portalis, and Story. The British minister must have writhed and paled as he read it.

1161. The last triumphant appeal of the prize-court educated jurist is to the practice of nations. He tells us to appeal to the irrefragable proof of the law of nations, the practice established by nations. They alone were competent; they have made the law; it is their own institution. Appeal to the precedents, to the Assyrian law of war, as enunciated by her captain:—"Behold, thou hast heard what the kings of Assyria have done to all lands, by destroying them utterly; and shalt thou be delivered?"—to Sesostris and his captive princes;—appeal to—

"The new Sesostris, whose unharnessed kings,  
Freed from the bit, believe themselves with wings."—Byron.

Appeal to the treaty which Joshua made, and the princes of the congregation sware unto the Hivites, and the manner in which he performed it. Appeal to the slaughter of the Amalekites, and the hewing to pieces of Agag;—to the mangled Hector at the chariot-wheels of Achilles;—to the rage of Tomyris, and the bloodthirsty head of the Persian;—to the insolence of the Roman triumph and her savage exultation in war,—to her crimson arena and her gladiatorial

show;—to the cities sowed with salt, and the sanctuaries furrowed by the ploughshare. “*Delenda est Carthago*,”—the rival city, the detested city, must be utterly destroyed;—appeal to the plunder of Crassus, and the ferocious revenge of the Parthian;—to the sword of Caled, and the smoking ruins of Damascus. Appeal to the pompous temples, the magnificent palaces, the spacious cities, the cultivated fields, blazing, smoking, black, depopulated, desolated from Kinnoge to Sumnat, before and behind the holy legions of Mahmoud the Gaznavide.—Appeal to the plains of Carisme, reddened with the blood of a hundred thousand prisoners of war by the edict of the ruthless Zenghis.—Appeal to the laws of Pizarro and the ravage of Peru;—to the partition of Poland, perpetrated by three mighty monarchs, and maintained by a thousand crimes;—to the massacre of Ismail, and the wrath of the frightful Suwarrow. Appeal to the decrees of Napoleon; to the British Orders of Council;—to the Taeping warfare, and the depopulated cities of China;—to the practices of captors, and of the courts which divide the spoil. Appeal to the holocausts of Britain, the hecatombs of Gaul, and the reeking altars of Mexico;—to the cannibal banquets of New Zealand, and the Battas, who dine on their prisoners;—to the Red Indian, his scalping-knives and tortures. Appeal to the proclamation of Lincoln, the most atrocious, the most murderous, the most perfidious, the most dastardly of every savage expedient of war. Such are the practices of nations to which we are taught to appeal.

1162. Happily there are some brighter precedents, though comparatively few; precedents to which it is agreeable to appeal, but they are mingled with romance. We will appeal to the exchange, by Glaucus, of his silver for the iron mail, for the immortal author of the story expressed a sentiment of his time;—to the capture of Romanus, and the generosity of the victorious Turk, though not untarnished by affront. We feel for the Norman Robert, who virtualled the fortress he was reducing by famine lest his brother

should starve: though this was an extraordinary precedent in war. We will appeal to the emancipated reason of Europe, to the declaration of Paris, the most glorious achievement of modern times, consecrated at the altar of justice, confirmed by the unanimous voice of the nations, questioned only by the technical practitioners of prize-courts, as if their paltry precedents could make a universal law.

1163. The Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, assembled in Congress at Paris, April 16, 1856,—

“Considering—that maritime law in time of war has long been the subject of deplorable disputes;

That the uncertainty of the law, and of the duties in such a matter, give rise to differences of opinion between neutrals and belligerents, which may occasion serious difficulties, and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled in congress at Paris cannot better respond to the intentions by which their governments are animated, than by seeking to introduce into international relations fixed principles in this respect.

The above-mentioned Plenipotentiaries, being duly authorized, resolved to concert among themselves, as to the means of obtaining this object, and, having come to an agreement, have adopted the following solemn declarations:—

1. Privateering is, and remains, abolished.
2. The neutral flag covers enemy's goods, with the exception of contraband of war.
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.
4. Blockades, in order to be binding, must be effective,—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries

engage to bring the present declaration to the knowledge of the States which have not taken part in the Congress of Paris, and to invite them to accede to it.

"Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

"The present declaration is not and shall not be binding except between those Powers who have acceded or shall accede to it."

It has been acceded to by almost every European state.

1164. Search them all for information,—prize-courts, text-books, treaties, dispatches, and the annals of the world. See what has occurred, and provide for what may occur. Read what has been thought, and ponder upon it. Study even the decisions of the prize-court, but be not carried captive by the speciousness of argument on which the judgments are founded. See if you can find among these judgments a single specious argument for a neutral's acquittal; you may find one in favour of the acquittal of a fellow-subject. See whether the captors are not regarded as owners, against whom the real owner has hardly a claim, except by indulgence, by remission of the captor's rights, by exception out of belligerent rights, by concessions, grudged by the prize-court and narrowly construed, though granted by the sovereign of the state. See whether, when the captors were little less than pirates, the wreck of the vessel of the despoiled neutral has not been condemned to pay their costs. See whether, when the capture would, were it not under a commission, be absolutely piratical, the captors have not been almost invariably relieved from making reparation. "Within my knowledge and recollection," says Dr. Lushington, "there have been certainly not more than ten or a dozen cases in which costs and damages have been given." (Elise.) Happily for the credit of England, the atrocious

practice of its prize-courts in this respect has received a sharp correction from the Privy Council (*Ostsee*), which has excited the lamentation of its practitioners.

1165. Your final and only sure appeal is to the supreme tribunal, the controller of prize-court doctrines, of text writers, of treaties, and diplomatists, the contemner of the practice of nations,—to the reason of mankind, the law of right and wrong, the rules by which society can be best governed and the common happiness best secured, the rule of progressive science and civilization.

1166. Our arguments are multiform, and may appear to many prolix, and to some superfluous; but we have to encounter a wide-spread opinion, maintained too by the majority of modern legists, that the practice of nations has established the law of nations, and to address ourselves to various phases of the human mind. The practice to which they refer, when examined, will prove to be only the practice of the great maritime nations, adopted in the insolence of victory or the agonies of war. The proposition which we assert is, that reason is the sole arbiter, that the law of nations is an abstract principle, that the practice of nations is admissible for its interpretation only when consonant with that abstract rule.

1167. We shall have, 1st, to consider the laws of war as between the belligerents; and, 2ndly, as between the belligerent and neutral. The first head becomes subdivided into—1st, the consideration of the laws between the belligerent Powers; 2ndly, between a belligerent Power and the subjects of the enemy; 3rdly, between the belligerent Power and its own subjects; and, 4thly, between the subjects of the antagonistic belligerent Powers. The second head is subject to the like subdivisions:—1st, the laws between the neutral and both each or either of the belligerent Powers; 2ndly, between the neutral Power and the subjects of the belligerent; 3rdly, between the belligerent Power and the subjects of the neutral; 4thly, between the subjects of the neutral and the subjects of the belligerent.




1168. But there are two preliminary questions—1, who are entitled to be treated as belligerents; 2, the justice of the war.

1169. **BELLIGERENTS.**—Every nation will determine whether it will allow itself to be ranked as a neutral with each or either of the combatants, or will disclaim all relations, and regard the conduct of either or both as the conduct of rebels or pirates.

1170. A state, which has already acknowledged a country as independent, is bound by its former decision until that country has been permanently subdued, or its government effectually overturned. Every independent state at war is entitled to be regarded as a belligerent. But it is the existing government, and not the titular sovereign, which is entitled to be so regarded. Otherwise a deposed sovereign might have lawfully commissioned privateers, or a neutral might be bound to deny the political existence of the most powerful state in the world. James II. attempted the first expedient after his utter expulsion from the realm; the English held the commissions null; yet the English required the Danes to regard as piratical the whole nation of France after the execution of the king; the Dane made a noble reply.

1171. A colony, a district, a state, being a member of a federation, is in arms against the mother-country, or the kingdom, or the rest of the league: is it to be regarded as belligerent, or are all its battalions and ships of war, in respect of their captures, to be executed as rebels guilty of robbery on land, or of piratical depredations on the sea? The decision must not be capricious, a puny rebellion may assume immense proportions, a colony may subdue the parent state. The decision may sometimes be deferred, but when the question arises whether the conduct of the commissioned ships is piratical, it can be no longer delayed; the people who commissioned them are entitled to treat an adverse decision as an act of war, and to resort to retaliation.



1172. The United States of America were prompt to recognize the revolted colonies of Spain, but the remnant of those states are wroth that Europe should recognize as a belligerent power a seceding confederation with 400,000 men in arms.

1173. It is difficult to measure the strength necessary to constitute a belligerent power; but as soon as to treat its soldiers as rebels, or its sailors as pirates, becomes dangerous, as soon as it becomes formidable, a people in arms is entitled to be recognized as a belligerent power. So long as a province or colony can, by its army or navy, hold the rest of a powerful nation at bay, so long as doubt hangs over the conflict, it is entitled to be regarded as a belligerent.

1174. The belligerent power, not yet treated as an independent nation, is to be regarded as a conditional state; so long as it is recognized as a belligerent, all the laws and intercourse of war and of commerce prevail between it and the neutrals who have made the recognition, as between independent nations. Its government, its civil and military officers, and its officers of revenue are regarded as lawful functionaries. Its armies are not rebels or guerillas, its commissioned war-ships are not privateers. Santissima Trinidad.

1175. We use "power" in connection with belligerent to comprise the expression in the Act of Congress as to enlistment,—“any foreign prince or state, or any colony, district, or people,” with which the neutral may be at peace; and also to comprise the expression in the English Enlistment Act,—“any foreign prince, state, or potentate, foreign colony, province, or part of any province or people, or any persons or person, exercising or assuming to exercise the powers of government, in any colony, province, or part of any province or country,”—so far as the United States or England have recognized them as belligerents.


1176. We may observe that a protected nation does not become a belligerent by reason of war between her protector

and another nation. (Ionian ships.) She is to be regarded as neutral until she has actually taken part, or is involved by the other belligerents, in the war.

1177. **JUSTICE OF THE WAR.**—It is the object of each nation about to embark in a war to persuade all others of the justice of her quarrel, and to enlist their assistance, or at least their sympathies, on her side; but she reserves to herself the determination, and demands from all who remain neutral acquiescence in the alleged justice of her cause, and for the decision of this question there is no appointed tribunal, except that in some treaties there have been stipulations:—(1) For referring questions to arbitration; in others, (2) stipulations for limited neutral assistance, of which each of the bellicose parties is supposed to be aware; in others, (3) stipulations protecting certain countries by an absolute neutralization; and (4) in others, a guarantee of general or partial support in a just war.

1178. The first of these classes of stipulations depends for its observance on the faith of the nations in controversy. The second will have consideration under the head of confederation. The third will be discussed under that of neutralization. On the fourth, it may be sufficient to allude to the instance of the treaty of Paris, on the 30th of March, 1856, between England, Austria, France, Prussia, Russia, Sardinia, and the Sultan. By the eighth article of that treaty it is stipulated that, if there should arise between the Sultan and any one or more of the other parties to that treaty any misunderstanding which might endanger the maintenance of their relations, the Sultan, and each of those Powers, before having recourse to the use of force, shall afford the other contracting parties the opportunity of preventing such an extremity by means of their mediation.

1179. Each nation is, subject to its treaty stipulations, entitled to inquire into the justice of the actual or meditated hostilities, and their influence on her own interests and affairs, and to take part with either of the belligerents; but until



she determine to do so, whatever she may think of the justice or iniquity of the war, she is bound to act towards each belligerent as if his conduct were right, and to remain neutral, and, as to all military assistance, impartial between them.

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## CHAPTER VIII.

## BELLIGERENTS.

1180. SOME writers start with the general proposition that the belligerent has a right to kill his enemy, and consequently regard every act short of universal murder as a concession and surrender, on his part, of the rights of war.

1181. The proposition is as untrue as it is barbarous. It has no foundation either in natural or international law. Were it true, it would justify the utmost atrocities of war; it would make the massacre of Ismail lawful, and sanction the slaughters of Zenghis Khan. It would establish them as in accord with the laws of nature, and in harmony with sentiments we should entertain. We ought not to shrink or to shudder at the names of Suwarrow and Zenghis, but to regard them as warriors exercising their natural rights.

1182. Can a man by making a quarrel acquire a right to kill? Can a nation by quarrelling acquire such a right? If it could arise on any conditions, it could arise only in favour of the injured. It would be dependent on the absolute justice of the war. A man has a right to destroy his assailant, but only when necessary for self-defence.

1183. The military right of destruction is to be exercised only by and against the military forces of the belligerents, except when either has transgressed the laws of war, and is subject to many qualifications, limited by the requisitions of necessity for martial objects, though not so strictly as the right of individual men.

1184. If practice created the law, immolation or slavery would be the legitimate destiny of every prisoner taken in battle. The laws of nature are unalterable ; they may not be ascertained or understood ; they may not be respected or applied. They exist however, immutable, incontrovertible rules, which, as civilization advances, begin to be gradually known, more gradually appreciated, more slowly recognized, and still more tardily applied.

1185. The cruelties of war have however, until very lately, been to some extent mitigated, and its calamities in some degree alleviated by the recognition, and even the adoption, of some of the laws which ought to regulate its course.

1186. Some mitigating usages have sprung from the danger of retaliation, some from a sentiment of humanity, some from a notion of chivalry, some from imitation, some from obedience to the precepts of jurists, some have been stipulated in treaties between nations bleeding from the barbarities of war,—all tending more or less to alleviate the miseries and diminish the cruelties which had formerly prevailed.

1187. The Roman, the Greek, and the Carthaginian had no clear notions of the humanities of war, nor had they much opportunity of learning them from the history of the Egyptian, the Assyrian, and the Jew. Christianity, in contravention of the doctrines it taught, by superadding religious to political animosities, exacerbated the ferocity of the educated and uneducated barbarians alike.

1188. The warriors of Scandinavian descent and the chieftains of the tribes of Islam were the first on a broad scale to display the chivalry and generosity of wars. The valour of the chilly North encountered the bravery of the arid wastes ; the seeds of a genuine heroism, sown in Palestine, grew up, and, transplanted to genial soils, have thriven under the culture of civilization, but not fast. Their fruits are still immature.

1189. It is at length understood that, although the ordinary treaties and conventions which affect only their own

relative rights, contracts, and possessions, are annulled by the fact of a regular war, the belligerents are bound to observe towards each other the conventional stipulations addressed to the conduct of war, or to the relations to be maintained between them or their subjects during hostilities. Treaties add the force of absolute contract to such natural laws as they adopt, and constitute them positive ordinances between the contracting parties. Yet they depend for enforcement on national honour, and the dangerous consequences of the violation of national faith.

1190. The law is, that you may carry the war into the country of your enemy ; you may bear down all opposition ; you may take his villages ; you may besiege, bombard, storm, and raze his fortresses ; you may blockade his ports ; you may trample down his armies ; you may burn his navy ; you may execute his guerillas. It is said, but we cannot admit it, that there are cases in which, for terrible example, you may put his most valiant garrisons to the sword, and sack and pillage his resisting towns. There are limits to the havoc of war. You may not slaughter the unresisting population ; you may not enslave their persons ; you may not confiscate their lands ; you may not commit their houses and farmsteads to useless conflagration, or waste their harvests, or desolate their fields, or destroy their property in the mere wantonness of destruction. You are not to enter your warriors in blood, like bull-dogs and sleuth-hounds, to incite them by the taste of carnage ; you are not to let them loose to ravish and destroy.

1191. Think of retaliation ; the tide of battle may turn, your towns may be given to the flames, your wives and daughters to the despoiler, and your own realm may be made a scene of desolation ; or, though you return crowned with victory and laden with spoil, your disbanded soldiers will not have forgotten their habits, they may practise their lessons at home. You have a place in the community of nations. Will you degenerate into a savage horde ?

1192. Even your ancestors, who slew in hecatombs the prisoners whom they could neither liberate nor retain, dared not transgress the laws of nature, except under the priestly sanction and in sacrifice to their gods.

1193. The sublime moral axiom, the imperial law of nature and nations, and of every particular nation, of the land and of the sea, and even of the horrible congress of arms, is, that without consideration of interest, without contemplation of consequences, **WHAT IS RIGHT MUST BE DONE.** That virtue is its own reward, that honesty is the best policy, are ignoble and vulgar expressions of the same law, addressed to selfish considerations, yet conducive to the establishment of the axiom, though often, as well by nations as by individuals, not understood.

1194. **COMMENCEMENT OF HOSTILITIES.**—War has ceased to be proclaimed by a herald strutting forth with his tabard and trumpet. It has been announced by the tramp of an army, the broadsides of a navy, by skirmishes, by manifestoes, embargoes, reprisals and letters of marque, before it has been formally declared.

1195. **EMBARGO.**—The government of every nation is entitled to detain all ships in its ports about to sail with military means and munitions to a country in the attitude of war.

It has a right to detain for a reasonable time the people and property of the expectant enemy, as hostages and by way of security for the return of its own subjects from the land of the contemplated foe. But it is a right to be most cautiously and leniently put in force.

1196. The exercise of such right is in anticipation that the other country will violate a law of war, to which we shall have occasion to refer. Were those laws better understood, foreigners residing in each country, and merchants and others having their property there, would be relieved from the grievous anxiety, vexation, and loss often occasioned by this precautionary act.

1197. Governments in old time practised, and text-books

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treat as of right, the detention of the ships and goods of the supposed hostile country by way of conditional reprisal; and it is said that although, if the disagreement terminated in peace, the arrested property was released, yet if war followed it became captured and liable to confiscation as from the time of the embargo. This doctrine cannot be admitted as accordant with the progress of reason; for as it is a breach of national faith to take the property brought into a country on the confidence of peace, it is a breach of the law of nations to make it the subject of prize. If a process of reprisal and confiscation can be sustained, it can only be to the extent necessary for making satisfaction to the subjects who have been injured by the confiscations of the foe.

1198. **REPRISALS** are general or special: general, executed by the public armament; special, confided to private execution.

1199. **GENERAL REPRISAL** is a sort of backgammon, a little battle or skirmish, which may lead to an accommodation and obviate a general war. Entrusted to the officers of the nation, it might be executed against public property, the compensation might be levied with discretion, and the fear of further mischief may restore the peace.

1200. **SPECIAL REPRISAL**.—No one but the descendant of a Scandinavian would have thought of such a course. A. complains to his sovereign that a subject of a Castilian town has taken his ship or done him some such wrong to the amount of £520. 17s. 6½d., and that he has been here and there among the seaports of Castile looking after the redress which he could not find, and that in the bootless quest he has expended another £200. Instead of communicating with the foreign government, or taking compensation with his public force, the sovereign of A. hands him a letter of marque, an authority and direction to arm and man a schooner, and to do battle on his own account, to seize the property of any subject or subjects of the Castilian cities, until he shall have levied his £520. 17s. 6½d., the costs of his expedi-



tion and the aforesaid £200, and to bring to the royal exchequer an account of his foray, with the balance of the account. In what manner the amount would be levied, and with what exactitude the proceeds would be accounted for, and how the balance would be applied, a pirate and a prize court could best explain.

1201. PROCLAMATION.—Embargo has been inflicted, reprisals have been levied in vain. War presents himself in his enormous dimensions. The enemies, for they are such, may yet imparl, though not in terms of peace. There are cartel ships, and flags, and trumpets. Manifestoes and proclamations may be published in gazettes, which the sovereigns and all their people may read.

1202. The law of nature and of nations bids each belligerent to set forth the terms of the battle which is to ensue; what obligations will be respected; what fragments of broken treaties will attenuate the miseries of war; what time those who have come to dwell or trade in peace shall be allowed for the withdrawal of their ships, their persons, and their goods; what relations may be held by his own subjects with, or in relation to, the foe; what regard even the enemies may expect for their commerce, and how, not only the neutrals, but in some respects the subjects of the contending states, may deal.

1203. A more generous system of reprisal may ensue. Concession by one enemy may produce a liberal return. The merchants and the visitors may collect their property at leisure, and quietly depart. Some may even remain, associated with the subjects, under the ægis of their foe.

1204. ARMAMENT, PUBLIC.—The battle must be fought; the invasion must march; the defence must be conducted by the public armament. None but the public ships must contend upon the sea. Soldiers and sailors, and officers enrolled and commissioned, whose names may be known, whose conduct may be watched and reported, holding, or governed by those who hold, an honourable station, edu-

cated, and still subject to education in the ways of duty and of law, may alone be entrusted with the honour and safeguard of the state. Men for whom their sovereign is responsible, and who are responsible to him, as well for wrong to the friend, and even the enemy, as for wrong to the subjects of his realm.

1205. **Irregulars** and guerillas must not be invoked. They can be mustered only as the ministers of retaliation when the enemy has violated the laws of war.

1206. **PRIVATE.**—Can all who choose to take up arms be let loose on both sides to do havoc, and to enrich themselves with spoil? Such are the ancient precedents, and they have been recently cited. An adventurer who aimed at conquering a kingdom, or raising a condottieri band, proclaimed through Europe that there was a kingdom, a province, or prizes, or pillage to be won, and that all who would join his standard should partake in the acquisition. In more recent times buccaneering expeditions have been as openly advertised.

1207. Although the law of nations is compelled to endure war, it can prevent and punish, and will not permit the private spoliator to gather his ruffians, and to sail forth to plunder on his personal account.

1208. **PIRACY** is war without the attribution of any belligerent right, and, in strictness, every depredation on the sea, in excess of the rights of war, is a piratical act. It is hardly distinguishable in its nature from many another war.

1209. Spelman derives the designation from the Greek, as indicating a rover, a traverser of the sea. The English use the word corsair to denote a pirate; the French use it for a privateer. Pirate and privateer are almost undistinguishable terms. Pirate is from the Greek, and signified to attack, and was applied alike to the attack by Demetrius Poliorcetes on a town, or by a solitary skiff upon a merchantman at sea.

1210. Writers on piracy speak chiefly of its unhallowed honour in ancient times, forgetting how nearly the practice of antiquity is sustained by opinions which they themselves avow, founded on decisions of prize-courts and the usages of even recent war; how much within their own nations it has, within their own memories, been vindicated and esteemed; how possible it is, if their doctrines should be maintained, that it may again prevail.

1211. Uncivilized nations do not perceive a moral distinction between the conduct of a monarch setting forth to subdue the world in an informal or a formal war, laying waste the countries successively in his way, and the act of starving mariners of a barren rock, or of lean horsemen of a roving horde, with the black banner or without, waging war against whomsoever they may think fit to assail.

1212. The Arab captive of Alexander informed him that the distinction between the monarch and himself was, that the monarch committed robberies with a host, and he with a little band.

1213. Nor can the philosopher fully comprehend the moral difference. They are much alike, and should be equally repressed by inculcating such terror and detestation of the invader, that he who meditates assailing a weaker neighbour may be deterred from the enterprise by the universal sentiment of nations and the consciousness of mankind.

1214. The practical distinction is, that justice can more readily chastise the piratical shallop than the armament of a marauding king. But even on him, in some of its various phases, retribution will surely fall.

1215. From north to south, from east to west, and in the Mediterranean,—once accounted the civilized centre of the world,—on sea and on land, in all ages, in all climes, the piratical flag has been proudly and fearlessly unfurled; indeed, the terms pirate and assailant are not only interchangeable, but often interchanged. He who is called a pirate does

not always deem himself himself a buccaneer. And many a district and body of people, termed and treated as rebels and pirates, have attained sufficient puissance to demand and obtain recognition as belligerents, and ultimately as independent nations. Their wars, at first rebellious and piratical, gradually grew into tolerated, and at length into recognized regular, war.

1216. The history of China is soiled with piracy in every page. It tells us how often, and how often in vain, that vast empire had to strain its strength against piratical swarms, surpassing the European mediæval navies, outnumbering, and perhaps superior to, the vaunted Armada of Spain. It tells us how often it had to crave assistance from barbarian fleets, and how even Western skill and discipline were insufficient to subdue the marauding foe.

1217. Not only the islands, but the coasts of the Malays with the commission of their chieftains, if that avail, have, from perhaps before the time when Sabæan traders first traversed their seas, to the time when the armaments of Europe were arrayed against them, carried on upon all nations a piratical war.

1218. From before the times when the King of Crete swept the Eastern Mediterranean, and the Rhodians became the protectors of that sea, the piratical achievements of the royal Menelaus and a hundred petty kings have tuned the lyre of poetry, and excited a hero-loving age. It was not over a petty cruiser, but a fleet which well-nigh desolated the coasts, and defied the power of Rome, that Pompey won the battle which acquired him the honours of a god. It was not against petty cruisers, but against the navies of the nations of Africa, that the states of Italy, France, and Spain, and even England, had for centuries in vain to contend. It was against navies which sometimes led the Mediterranean fleets to victory, and often encountered them with defeat.

1219. It was not with single ships that the buccaneers

invaded and ravaged the West Indies, and provinces of Central America, but with forces adequate to the conquest of many a sovereign state.

1220. Piracy was the natural vocation of the peoples from whom we claim our descent,—the Sea-kings and the Scandinavian Yarls. Archpirate was the proud designation of the High Admiral of the Anglo-Saxon coasts. In their annals are to be read of exploits more desperate and desolating than the achievements of the Spartan king.

1221. Nor was piracy confined to the sea. Without again traversing the world, we see the condottieri despoiling the nations of Europe, sometimes enrolling half their legions under the commission of one, and the residue under the standard of the hostile king. It was war under such auspices, but piracy with the banner which led them, under the Black Bourbon, to the pillage of Rome.

1222. Such outrages the malefactors denominated war; they were often sanctified by religion, and accompanied by the priest; but the sense of mankind has denounced them as piracy, rapine, and murder; and civilization has at length in like manner denounced similar atrocities perpetrated under another name.

1223. We must consider well this subject of piracy, and whether great nations which claim for themselves a high degree of civilization may not be guilty of the crime.

1224. Acts perpetrated on a small scale are deemed crimes, which, executed with grandeur, are characterized as glorious achievements.

1225. A small community consecrates in its poetry acts which a larger denounces as criminal. Why? In the contemplation of the little community they are, but in that of the great state they are not, of sufficient magnificence.

1226. Piracy generally, certainly not universally, originates with the inhabitants of sterile islands, and coasts inadequate to their subsistence,—little or no agriculture, little or no pasture, and the precarious produce of the sea.

1227. Ports favourable for commerce, with the means of

inland intercourse, beginning in piracy, grew up into commercial entrepôts, and became the repressors of the crimes in which their prosperity began ; but the hereditary sentiment still survives.

1228. Jomsberg, perhaps the most extraordinary and exemplary of piratical communities, was founded in the latter part of the tenth century, on the Pomeranian coast, by the celebrated Palnatoke. Women were altogether excluded from its walls, its people were a race of Bersærkers, who improved, to the extreme of atrocity, the Wendish code of the Scandinavian law, for the regulation, with extreme precision, of the methods of plunder, and the division of the spoil. Before its destruction, towards the end of the twelfth century, it had been converted, by its advantageous situation and anomalous energy, into a repressor of pirates, and a sumptuous commercial town. But the sentiment of piracy was not extinguished. Even in Tyre, Rhodes, Carthage, and Etruria, the least piratical of ancient states, even in great modern nations, where the sentiment of piracy ever existed, it has not become entirely extinct.

1229. Piracy is defined as depredation on the sea, without the authority of a sovereign state,—it should be without the authority of a recognized belligerent power. An assault, with the intent of taking or plundering a vessel, is piratical, whether successful or not, although no murder be committed, or robbery perpetrated. (Whea. 185. 1 Phill. 379.) We have spoken of the misapplication of the term to other crimes punishable only by the municipal law.

1230. PIRATES.—Of these there are three kinds both on land and at sea.

1st. They who sail or march under no colour, but their own,—buccaneers at sea and banditti on shore. “The blood-red signal glitters in the gale.”—Corsair.

2nd. They who sail under colour of war, with the flag of one of the belligerents, perhaps using each in turn. Corsairs on the wave and Guerillas among the hills.

3rd. They who sail under the colour and commission of one of the belligerents. Privateers on the water, and Irregulars when desolating the land.

All, freebooters, robbers, pirates, according to the law of nature and nations, though the third class have stanch friends and advocates among lawyers professing international law.

1231. **BUCCANNEERS.**—The first class of pirates are universally condemned. They may be captured by any ship of war, in fact by any otherwise peaceful subject. They may be apprehended as common thieves, and treated as robbers and bandits.

1232. A foreign ship of war does not infringe the sovereignty of the dominant state, by capturing pirates within her waters, for every man and vessel under the protection of the law is bound to aid in the arrest of the highwayman and thief. The foreign ship is a denizen of the dominant nation, and in capturing pirates acts in aid of her laws. The captor must therefore deliver the culprits to the national police, to be tried according to the law of the nation in whose waters they are found. In some respects regard is had to the various nationalities of the heterogeneous crews, and to the laws of places where the acts charged against them were done.

1233. To this class would belong rebels who seize upon or plunder ships of a neutral state. Magellan Pirates. Eliza Cornish. And see 13 & 14 Vict. c. 26, which gives rewards to the captors of pirates; and see as to piracy 11 & 12 Will. III. c. 7, and 18 Geo. II. c. 30.

1234. If passengers, emigrants, coolies, or part of the crew rise against the master and deprive him of his ship, it is an act of piracy, although they do not use the vessel for piratical purposes, but run her ashore. (Eliza Cornish.) But not if they merely confine him, or when necessary put him in irons on account of his grievous misconduct. James Campbell.

1235. The courts of our nation regard a conviction of

piracy, according to maritime law, as equivalent to a conviction in their own. Panda.

1236. **CORSAIRS.**—Pirates of the second class are gentlemen privateers, patriots, in a hurry to serve their country and themselves, who arm their vessels without waiting for the supreme command; and gentlemen privateers, the subjects of neutral nations, who with surpassing sympathy for the belligerent cause, sometimes a sympathy fluctuating with the prospects of the day, arm their ships and furnish them with a flag of one or each of the belligerents, and of the state to which they belong.

1237. Those of the first subdivision are sometimes indulged by their own country with the jackal's share of the prey, and through fear of retaliation treated by the adversary with greater leniency than they deserve. Those of the second, so long as they are faithful to his cause, are too often regarded by a belligerent with favour on account of the assistance they afford; but they may be justly and without pretence for retaliation treated as pirates by the adversary, and are as such amenable to their national courts.

1238. A capture by pirates effects no change of property; but that for which no owner is found, belongs to the sovereign by whose ship the pirates are taken, and is generally distributed among the officers and crew in the same manner as prize of war. Panda.

1239. The 15th Congress of the United States, statute 1, c. 88 (20 April, 1818), declared guilty of a high misdemeanour, any citizen who, without its limits, should fit out and arm, or attempt to fit out and arm, or procure to be fitted out or armed, or knowingly aid or be concerned in the furnishing, fitting out, or arming of any pirate ship, or vessel of war, or privateer, with intent that she should be employed to cruise or commit hostilities upon the citizens of the United States, or their property, or should take the command of or enter on board such vessel for that intent, or purchase any interest in such vessel with a view to share in its profits.



1240. We have little to say for guerillas, properly so termed. Their exploits are on land, but of all pirates guerillas alone are not unfrequently justified by the conduct of the war. The consideration of their case also involves one which occurs on the sea, for all men have a right to fight in self-defence, and to repel an attack upon their property or themselves.

1241. Consequently, although the merchant of a belligerent country is not justified in equipping vessels for war on his own account, he is entitled to arm and man his ship for self-defence; and if attacked by a foe, be he merchant ship, pirate, privateer, a ship or war, his vessel may repel the assault, and if victorious is entitled to the prize. Yet the genial law of the Admiralty affords her only the same reward as it bestows upon the private volunteer. Guerillas are not unfrequently fighting in self-defence; not in the abstract defence of the sovereign and his nation. That is the business of the regular troops.

1242. The invader is bound to respect not only the persons, the lands and the crops, but all the moveable property of the peaceable inhabitants of the parts of a country which he has subdued. Having by conquest replaced the former sovereign and brought the people under his temporary rule, he is bound not to plunder but to protect them. Allegiance and protection, though temporary, are reciprocal rights.

1243. When these rights are violated by the victor, (of course we except the ordinary incidents, the destruction of the battle, the march of the soldiers, the wreck in the passage of war),—when these rights then are further violated by the victor, when the property, the lives, the chastity of the unresisting inhabitants are assailed, they are rightfully roused to resistance, and justified in retaliation for such atrocities by resort to irregular arms.

1244. PRIVATEERS.—This class was the natural progeny of the first and the second. The buccaneers and corsairs crowded to the distributor of commissions and flags, that

their sins might be forgotten, except that indistinct rumour of their exploits which approved them to the belligerent whose service they sought; who—in mercy!—conceived it his right and his duty to exert every force he could employ to distress and exterminate the enemy, and thus to shorten the war. For such belligerents privateers are the fittest instruments; the worst of them are the best, for they are best adapted to the process of distressing and destroying the foe.

1245. The belligerent took a bond from the newly-created captain, with sureties for his good behaviour. In what does the good behaviour of a corsair consist? The captain may forfeit his bond, his sureties may come to grief. So may his ship, and the crew, with all they and their sureties may possess. What is good behaviour towards those whom he is commissioned to take and destroy? The bond is scant security for vexation of the neutral; to vex the enemy is his avocation. Avarice is the incentive, and on his vexation the only restraint.

1246. All maritime nations more or less employed them. They improvised a navy, as they called it. They hired the buccaneers and corsairs, robbers and bandits, the pirates of every description and clime. Their leaders were honoured with rank, and the royal authority to take, plunder, and destroy. We have seen that the middle ages of Europe are full of their exploits.

1247. Comparatively modern precedent rendered privateers lawful, as more venerable precedent had rendered the rest of the piratical craft.


1248. Although the courts of the nations which engaged them took little account of the fulfilment of their natural or unnatural obligations, they were careful to classify these adventurers with reference to their interest in the prize; somewhat in accordance with the following scale:—No. 1, Buccaneers: no interest; they therefore kept all that was not wrested from them. No. 2, Corsairs: a small share of what remained after law and other expenses had been paid. No. 3,

**Privateers :** what remained after law and other expenses had been paid. To constitute a privateer, the private-armed vessel bore the commission of a belligerent Power; the filibuster was converted into a captain. The Rover may be more rash, more hard-hearted, more rapacious, more bloodthirsty, and more reckless than the educated commander of a ship of war; but in other military virtues, although he bear a more independent commission, he is not likely to excel. Mere excess of power, as it was called, was not piracy in the commissioned privateer.

1249. But the Rover must bear a commission from a belligerent Power, and he must be thereby authorized to war against another belligerent Power in that commission named. The Power conferring that authority may be designated his protector. He is said to have been subject to a few restraints. If a Rover, commissioned against one Power, made war against another Power hostile to his protector, it was not deemed piracy; but it was deemed irregular, although the war with the second Power broke out after the commission had issued.

1250. A Rover bearing the commissions of each of two allied Powers against the common enemy, making captures, occasioned a doubt as to the commission to which his captures should be referred, for his protectors might act upon different constructions of the laws of war. This also was not piracy, but an irregular act of war. The courts even held that capture by a neutral ship bearing a belligerent's commission, was not piracy, but merely an irregular act of war.

1251. When the act was held irregular, the commissioned Rover was degraded from Class No. 3 to Class No. 2; so that others participated in the plunder. It was even said that the state which granted the second commission was responsible, unless it was issued in ignorance of the first. The neutral's chance of reparation seems to have rested on the slender security of the bond. As to the enemy injured



by those outrages of war, how could any reparation be obtained ?

1252. Adventurers of piratical sentiments require no such encouragement ; there is hardly a pretext too flimsy for these rash and reckless men. After James II. was expelled from the shores of all these kingdoms, without a port, without a ship, a refugee in a foreign land, dependent upon a foreign sovereign, he dared to grant, and rovers were hardy enough to accept, commissions to plunder the commerce and ravage the coasts of a people which had its king, lords, and commons, its armies, its fleets, and the attributes and power of a nation, competent and prepared to encounter the nation in which he who granted the commission was sheltered, with all her allies. See 1 Phill. 398-406.

1253. It has however been held that the taking and plundering of a neutral ship by a commissioned privateer is piracy ; and that the commission of a privateer did not authorize the capture of an enemy's property on land, as that was deemed to be governed by a different rule of international law.

1254. The nations against which the privateers were armed, did not always treat them with equal consideration. The natural-born subject capturing the ships of his country under the commission of the foe is a pirate and a traitor. 1 East, P. C. c. 17, s. 5.

1255. IRREGULARS.—This being a division of the third class, carrying on their wars for the most part by land, we have not much to do with their operations. It is enough to declare that irregulars, whether such as were summoned throughout Europe by William and his nobles for the conquest of England, or such as were collected by a Mahratta subahdar proclaiming war, and the Indian Company's license to loot, or such as were hired and enlisted in foreign countries one by one, or condottieri hired by the lot, or Hessian mercenaries rented from their prince by the thousand, are all unfit instruments of war. They constitute no part of the responsible troops

and officers of the belligerent sovereign. They fight not on their allegiance, they share not the glory of the nation, they have no part in its honour, no interest in its protection ; their guerdon is their pay, their honour their rank, their fortune the share of the spoil. There is no sympathy between them ; on the expiration of their contract they may join the hostile banner.

1256. They imbrue their hands in blood without justification, they are hired to rob and to murder, the rights of the belligerent do not extend and cannot be extended to them ; the only reason for sparing them when captured is the danger of retaliation, unjustifiable, but not therefore the less likely to occur.

1257. But all nations, ancient and modern, have called to their battles, by land and by sea, mercenaries disciplined and undisciplined, Gauls, Numidians, Varangians, Scots, Swiss, Germans,—Condottieri, Skinners, Cowboys, ravagers of every kind.

1258. This country in her civil war against America, summoned the red savages from their forests, excited them to vengeance for their lost hunting-grounds, armed them with keener tomahawks, furnished them with sharper scalping-knives, and stimulated their cruelty with ardent drink.

1259. But, as if to wash that stain out of history with a deluge of blood, if a deeper dye could delete it, the children of those who perished by the tomahawk, the descendants of those who writhed under the scalping-knife, in the rage of their social madness, have called the most terrible of all irregulars, the black sons of Africa, to the work of domestic destruction,—have invoked slaves by the most nefarious of practices, by the worst of rewards, by the lying promise of freedom, and the license of demoniac revelry, to imbrue their hands in the blood of their masters ;—a pretence of philanthropy, the horrible expedient of desperate war. Can precedents like these establish the laws of nature and nations ?



1260. Various treaties had restricted, as between the parties to them, the extreme use of privateers, some declaring the act of privateering by the subjects of one of the contracting nations against the other, piracy. 1 Phil. 394-397.

1261. Some treaties had stipulated that neither of the contracting nations, when neutral, should permit its subjects to hold commissions in the service of a Power at war with the other.

1262. Some nations have spontaneously prohibited their subjects from holding commissions in the military service of either of the contending powers.

1263. The United States of America, by Acts of Congress of 1794, revised by that of 1818, forbade all persons residing within its territories, whether citizens or others, equipping privateers, or receiving commissions, or enlisting men for the purpose of taking part in any war between foreign countries.

1264. England had previously made some provisions in restraint of her subjects taking part in foreign wars, and in 1819 replaced those provisions by others still more extensive than those established in America in the preceding year. 59 Geo. III. c. 69.

1265. These acts of the American and British legislature will be further considered in treating of neutral rights and obligations.

1266. Neutrals, sometimes under treaty, sometimes on their own policy, prohibited the admission of privateers into their ports.

1267. At length in 1856 the great Powers of Europe declared that "privateering is and remains abolished;" the other European Governments readily acquiesced. The United States of America declined to concur; she had again and again proposed to give freedom and peace to the merchant ship traversing the sea, to whatever realm she might belong, whatever banner she might bear, whether the ruler

of the country were friend or foe, to whatever port she was destined, under the condition only that she carried no munitions of war ; yet America declined to concur in the abolition of privateers, for, said she, ye great maritime nations capture our traders with your innumerable ships of war ; your high-commissioned sailors are almost as reckless as were your licensed robbers and buccaneers ; we have not the means of dignified retaliation ; our admirals and captains and regular commanders are few, we must extemporize an equal number of marauders, and unless you will take your mastiffs off the chase, we must lay on our bloodhounds. Such was the argument ; the imputation was at least to some extent unjust.

1268. The reply was unbecoming America, which had taught the better lesson. Her policy did not entitle her to disclaim and disobey the law of nations, or to require, as a condition, that others should change their scheme. The law of nations is unalterable, and bends not to the policy of England or of France, or of the United States.

1269. That policy was short-sighted, and in result, like other violations of law, impolitic ; her refusal perhaps produced its punishment. Her southern provinces separated from her, with ships of war in less proportion to hers than her ships had borne to the combined navies of Europe, occasioned an apparent alteration in her interest and policy, and with it in her inclination. The day, it may be hoped, is not far distant when the States North and South will have sheathed their swords, and subscribed without suspicion this declaration of public law. Subscribed or unsubscribed by both or either of these nations, that is the law, of which the manifesto of Paris was only a declaration.

1270. One learned writer whose early notions are affronted by it, seems somewhat relieved by the reflection that it has not yet been embodied into any treaty. Murder requires no private contract to make it illegal. The nations have concurred in declaring that a crime, which is a

crime; it is hardly necessary that any two or more of them should agree not to commit it.

1271. Should any nation which has not assented commission privateers, all the parties to that famous declaration, and indeed all others, are bound to regard the commission as null and illegal, and the paper which contains it as a piece of waste paper. Should any nation which has assented to that declaration dare to violate the laws it has enunciated and issue such commission, even a nation which had withheld her acquiescence is entitled to treat the commission as futile, and to deal justice on the buccaneer. Before and without that declaration it was and is the law, and it has been made plain and manifest by the concurrent opinions and authority of all the members of that great majority of nations who have proclaimed it. It is not an agreement that it shall be, it is a true and authoritative record that it is the law. That law is immutable, no power on earth can change it.

1272. DETENTION.—Peace is the natural and normal state of nations, the state in which they are assumed to be with each other, the state in the continuance of which it is to be assumed that they will remain until war is announced.

1273. All men have the right of intercourse with the countries at peace with their own, to take such of their movables as they please with them, to contract obligations with their subjects and governments, to introduce and sell their shipping and merchandise, to purchase ships, goods, and lands, and to deal with the subjects of the friendly nation as they deal with each other, subject only to such restrictions and limitations as the country in which they are visitors or resident may have publicly established, and subject to any restrictions which may have been imposed by the sovereign of their own state.

1274. National faith therefore guarantees to all who have come as residents or visitors in time of peace the opportunity of safe return and a safe-conduct, if necessary, on the break-



ing out of war. They have come as friends on the faith of the nation which has admitted them, and on the faith of the continuance of the natural state of amity which existed when they came; they are entitled to depart as friends, and to reach a place of safety before a hostile attitude is assumed against them.

1275. The right of continuous residence is not guaranteed, for a nation cannot with safety permit her enemies to reside within her bounds, and the presumed knowledge of this qualifies by inference the permission of foreigners to enter the land. Such residence is however sometimes allowed under such surveillance and conditions as the dominant country may deem sufficient to secure it from the possible machinations of her foes.

1276. And as he who came in peace is entitled to a reasonable opportunity for the withdrawal of his person, so he who, in time of peace, had come with, or sent his ships, his merchandise, or other goods into, or purchased them in, a country not his own, is on the same principle entitled to a reasonable opportunity for the withdrawal of his ships, merchandise, and other goods.

1277. His right of withdrawal is, not simply from the margin of the land becoming hostile, but into his own country, or such convenient port as he may select. He is entitled to the reasonable opportunity of placing himself and property in a place of safety; that allowed, no more is required from national faith, as to his person or goods capable of removal.

1278. When a nation permits foreigners to purchase land or permanent interests in land, or to become creditors upon its government or subjects, or to acquire any interest irremovable in time of war, such permission entitles all who have made such purchases, become such creditors, or acquired such interests, to place them under the ægis of the national faith, and to retain the right to them throughout, and to reclaim them after the termination of the war. And although

an enemy cannot personally reside on or possess his landed estate, recover his debts, or enjoy such other irremovable interests while the war rages, he is entitled to resume and recover them on the return of peace. However, the nation in which the property remains has not, by permitting the ownership, taken such property under her especial care. It may perish for want of protection, but it must not be taken or destroyed.

1279. The time to be allowed for the owner's withdrawal is reasonable time to collect the removable property under his actual control, to unload the cargo with which his vessel is freighted for delivery, to take the ready goods or cargo on board, to wait a reasonable opportunity and a wind necessary for sailing, and time to pursue his course without affront to the first friendly port of his destination or choice.

1280. Moreover, the ship which has sailed for it in the time, and on the faith of peace, is entitled to safe passage, and to enter that now hostile port, to deliver her cargo, and to take on board what is ready, and to depart from it unmolested, as if she had been there on the eruption of war.

1281. And while the foreigner who has come in time of peace remains in the enemy's country, he is safe from private aggression. Neither he nor his property can be taken, except under the public authority; he may safely depart with his vessels and his goods, until the government or its officers interpose; and until the sovereign has so ordained, his vessel ought not to be captured even by the public ships.

1282. The moveable property left on the breaking out of war in a hostile country continues to belong to its owner, although he has become an enemy and departed the realm; it may want adequate protection, but no one has a right to touch it; and his it remains until the return of peace, then he may come and reclaim it, unless it is confiscated by the government of the country in which it remains, that is, confiscated at the instance of the state by the sentence of a

competent tribunal, and, it should be added, on justifiable grounds, not merely because it is an enemy's property under the safeguard of national faith. The sentence of confiscation by such a court however concludes all claim, and confers an incontrovertible right on him who derives title under it.

1283. The ship of an enemy which had arrived in England in peace, and not departed within the time limited by the Order of Council, has however been excluded from the protection of the law, and regarded as proper prey; for it was held in the prize court, that any subject, though not commissioned, might seize a ship belonging to an enemy, but that it did not become his prize. (Emilia.) And it has been said in an English prize court, more in accordance with the practice of the court than with law and honour, that no doubt could exist as to the right of any person to seize an enemy's property found in this kingdom, unless protected by royal licence, and to bring it to that court for adjudication for the Crown. Johanna.

1284. The want of a sufficiently general recognition of these laws often leads to great inconvenience, more especially to the merchant. Were they generally accepted, the foreigner might dwell in security, and commerce might be conducted with confidence, until the knell of the tocsin of war. The sacred right of withdrawal is sometimes recognized in treaties prescribing the period during which it shall be enjoyed. In the absence of such treaty, and sometimes from want of confidence when it exists, the warring nations inflict reciprocal injury by detaining the persons, ships, and property of the adversary, until they ascertain what he means to do; and that determination is sometimes decided by supposed interests rather than respect for international honour and the observance of international law. Whea. 369-375. Santa Cruz.

1285. England, as well as the other European nations which had the least pretensions to the character of commercial, from an early period recognized to some extent this right of the safe departure on the breaking out of war;

indeed, without some protection in this respect, commerce would not approach the coast.

1286. An enemy, residing in a belligerent country, under licence or other proper authority, is under the protection of, and entitled to appeal to, her laws, in the same manner as an alien friend; and in an action or suit in the English courts of law or equity, the right to reside and to sue is assumed, unless alienage is pleaded.

1287. The English prize court requires an enemy claimant to state in his affidavit the special circumstances which entitle him to sue. It will however allow him to amend the omission of this statement if he can. *Troija*.

1288. The course adopted reciprocally by the Ottoman Porte, Great Britain, and France, on one side, and Russia, on the other, on the outbreak of the Crimean contest, was a considerable advance towards civilization in war.

1289. At the commencement of hostilities in 1853, the Ottoman Porte, instead of adopting the ancient practice of embargo, granted the Russian ships sufficient time to repair to their destination, and agreed not to oppose the free passage of merchant ships of friendly nations through the straits of the Black Sea.

1290. In October, Russia, in consequence, granted the Turkish vessels in her ports liberty, until the 22nd of November, to return, and if loaded before that time on neutral account, to proceed with their cargo to the port of their destination. On the 27th of March, 1854, France, and on the 29th, England, by proclamation, granted six weeks from the date, for Russian merchant ships to unload and load and to quit, whether then in a French or English port or on their voyage towards it, having commenced their voyage previously to the declaration of war. If met at sea, they were to be permitted to continue their voyage; contraband and officers in the military or naval service were excepted. On the 7th of April, England extended the permission to Russian ships from or to British India or her colonies.

1291. On the 19th of April, Russia published a notice, allowing English and French vessels six weeks, from the 25th of April, to take on board their cargoes, and sail from Russian ports in the Black Sea, the Sea of Azof, and the Baltic, and six weeks from the opening of the navigation to leave the ports of the White Sea, with free passage to the place of destination, if their cargoes were on board within the prescribed periods. On the 15th of May, England extended the privilege to all Russian merchant vessels which had sailed from any port of Russia, in the Baltic, or the White Sea, for any British port before that day, and France granted a similar extension to such vessels as had sailed, destined to any French port. The privilege was not extended to Russian vessels destined to neutral ports.

1292. These declarations were simply in compliance with the law of nations, and the rights of the merchants, who had acted on the confidence that nations would do their duty and remain in peace, and that if they should think fit to quarrel, they would not confiscate, that is to say, rob them of, the property which, in the plenitude of commerce, and for the mutual enrichment of nations, had entered their ports.

1293. The prize court held that the privilege of protection extended to a voyage as continuous, although the vessel sailed in ballast, and took in her cargo at another port on her way to that of her destination. *Argo*.

1294. Such orders of the sovereign are to be construed most liberally in favour of the enemy, it is said, on account of their being relaxations of belligerent rights. (*Phœnix. Franciska*.) We quite agree that such orders, and that all relaxations of belligerent rights, ought to be construed most liberally; and further assert that it is due to national honour that such orders should be most liberally construed, for they are not relaxations of the sovereign's rights of war, but recognitions of the right of the enemies to withdraw in safety from the land they had entered in reliance on national faith.

1295. **COMMUNICATION.**—Although war is raging, there still are means of communication between the governments of the belligerents, direct and indirect, official and inofficial.

1296. These are confined to the officers and agents of the governments under general authority, or authorized for the special purposes.

1297. Direct, through cartel ships, flags of truce, and even the emblems of surrender; indirect, through the mediation of friendly governments, through the medium of the ministers of the hostile nations resident at friendly courts, and even through inferior recognized agents. They are moreover enabled to communicate indirectly by their proclamations, and other intimations of their purposes and intentions, in their gazettes, and through the public press.

1298. There are also means by which the peoples of the hostile nations may communicate with each other to some extent. The public press makes their sentiments and opinions known, and its communications cannot be restrained, particularly as its productions are always accessible through the neutral states.

1299. There may, however, obviously be danger in the unrestricted admission of private communications between the people of the belligerent nations. The lawful subjects of such are science and courtesy, and, where it is permitted, the purposes of trade. This danger is one of the obstacles to general trade between the subjects of nations opposed in war.

1300. **TRADE** of enemies may be considered under the following divisions:—I. Between the belligerent countries: 1st in the ships of the dominant belligerent; 2nd, in the ships of the enemy; 3rd, in the ships of neutrals. II. Trade between the enemy and the neutrals: 1st, in the ships of the enemy; 2ndly, in neutral ships. III. Trade in enemy's products and manufactures: 1st, in the shipping of the dominant belligerent; 2ndly, in the shipping of neutrals.

We use the expression dominant belligerent to describe that nation in whose courts the question arises.

1301. There is a further distinction under the third division, between those products which are carried from the ports of the enemy to the ports of the dominant belligerent or those of neutrals, and such as are conveyed between the enemy's ports at home,—the enemy's home trade; or between his colonial ports, or between his home ports and those of his colonies,—his colonial trade.


1302. All these branches of trade, so far as they are carried on by the shipping of neutrals, will fall under consideration in treating of neutrals. They are the subjects of international law.

1303. **TRADE BETWEEN THE BELLIGERENTS** is trade carried on by the ship of one with the other belligerent.

1304. This part of the subject does not belong to the law of nations, it rests entirely between the belligerents, no other country is concerned in it. Consequently it is a question of policy, on which each belligerent is entitled to form, and, unless bound by convention or contracts, to change its opinion.

1305. The grounds on which such opinion should be founded are beyond the compass of this work. It is obvious that such trade is attended with the danger of intercommunication which might frustrate the objects of war; it is obvious that it might tend to the softening of asperities, and the restoration of more kindly sentiments, and the renovation of peace.

1306. It can hardly ever be unrestricted. It might be permitted in provinces remote from, while it is excluded from those near the seat of war. Commerce and war were not long ago carried on simultaneously between Great Britain and China. While the latter infested the north, the former enriched the provinces of the south of that immeasurable realm. It might be permitted in certain commodities, while others are excluded. It could never be allowed in arms and munitions of war.



1307. Belligerents might permit mercantile establishments of the subjects of their enemies to exist within their limits whilst they interdict the access of their ships.

1308. IN SHIPS OF THE DOMINANT NATION.—The right of the subject to trade at large, or under restrictions with the enemy, depends entirely on the consent of his sovereign; the power to enjoy such right fully or under further restrictions depends, so far as it is openly exercised, upon the consent of the sovereign of the hostile country.

1309. It is competent, of course, for nations in time of peace to enter into conventions for permitting general or limited commerce between their subjects in the eventuality of war. Whether they will enter into such contracts, depends upon their mutual judgment and inclinations, as to which each has a right to regard exclusively its own subjects, their wishes and interests, irrespective of the interests of other nations.

1310. Consequently, under certain circumstances it may be prudent to establish an entire or limited exemption of commerce from the risks of hostilities, at other times the reverse. It may depend on the relative maritime strength, or on that and its proportion to the extent of the commerce of each of the negotiating states, or on the extent to which one is dependent on the natural or artificial productions of the other. Such compacts therefore may exist between two or more nations, consistently with their non-existence with others.

1311. If the belligerents by convention allow a general or particular trade to be carried on between their subjects, the vessels and crews by which it is conducted are privileged, and must be treated with the same friendship, though perhaps with a greater watchfulness, as in the time of peace.

1312. It is obvious that no belligerent can permit his adversary to trade to his ports, or to those of neutrals, for the purchase of contraband of war, or even to convey it



from or to his colonies, or from one of his ports to another. It is still more clear that a belligerent will not permit his own merchants or manufacturers to sell or convey, either from his own ports or those of neutrals, to the ports of the enemy, either arms or munitions of war. The difficulty of restraining such transactions is among the greatest of those which affect commerce between belligerents, and the right of the enemy to trade in his own bottoms with his neutral connections, and, indeed, the general immunity of the merchantman and his cargo on the sea.

1313. Whatever traffic is conceded by one belligerent to another, every neutral is entitled to enjoy. (*Franciska.*) It is clear that a belligerent can have no pretence for condemning as contraband any traffic which he admits as lawful to be conveyed by his foe.

1314. Selden, in pages 403-7, refers to a treaty between Edward I. and Philip IV., which allowed freedom of commerce on both sides, and a truce with all merchants whatsoever on either side; but as to other things, hostility proceeded in the meantime, as it was wont, betwixt both the nations.

1315. It is a general concession to peaceful poor people in the times of all but the most reckless of hostilities, that ships of war shall not disturb fishermen in the open sea, or their own waters, in the pursuit of their peaceful vocations. Young Jacob.

1316. As a protected state is not, unless included by acts or proclamation, a party to a war between the nation by which it is protected, and another; it is entitled to conduct her trade with each belligerent, with all the exemptions of a neutral country. *Ionian Ships.*

1317. In the absence of stipulation, the existence of regular war between two states places the people of each in such a position towards the other, that they are characterized as enemies; and the subjects of each owe such a duty to its own as excludes residence, communication, or trade, without

its consent, in, or with the subjects of, the adverse nation. St. Lawrence.

1318. The question of inter-trading being one of policy, the two belligerents may entertain different views. Both may altogether or partially exclude the trades, or one may permit trade with the adversary, although the adversary may refuse to admit it.

1319. THE BELLIGERENT'S SHIPS.—The sovereign condemns to confiscation the merchant ship of his nation which, without his sanction, engages in trade with the foe. Such is the law of England. Hoop. Ocean Bride.

1320. He also confiscates the cargo on board her belonging to his subjects involved in such trade. But he ought not to confiscate the cargo of a neutral on board her; for the neutral is entitled to trade with his enemy, even contrary to his consent.

1321. A ship which after the outbreak of war sails to an enemy's port, and brings back a cargo, although purchased before the war, is guilty of trading with the enemy. (Rapid.) So is a ship which, with knowledge of existing hostilities, changes her course and brings a cargo from an enemy's port. Alexander.

1322. LICENCES TO TRADE or travel, and safe-conducts and passes also, are sometimes granted with a view to the advancement of science, or the mutual interests of the contending states. They are sometimes general, at other times limited to particular purposes. Whea. 382–475. Julie. Aurora. Ariadne. Caledonian.

1323. Such licences are to be carefully observed as to the times, persons, and places to which they are limited; in other respects they are to be construed liberally, and more so with reference to inconsiderable excess in quantity, than to difference in the kind of commodities to which they refer. They create in effect a suspension of war as to the ships, persons, and purposes to which they apply. Whea. 382, 475.

1324. ENEMY'S SHIPS.—The belligerent sovereign also

confiscates the merchant ship of the enemy which without his licence engages in trade with his subjects, and the cargo of the enemy on board her. Indeed such ship falls under the general rule of confiscation.

1825. The principle of construction which regulates licences granted to his own subjects, applies to those which the sovereign grants to the enemy.

1826. On the outbreak of the war with Russia, the Queen of England issued the following declaration, dated the 15th April, 1854:—

“It is this day ordered, by and with the advice of Her Privy Council, that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in Her Majesty’s dominions, all goods and merchandise whatsoever, to whomsoever the same may belong, and to export from any port or place in Her Majesty’s dominions, to any port not blockaded, any cargo or goods not being contraband of war, or not requiring a special permission, to whomsoever the same may belong.”

“And Her Majesty is further pleased, by and with the advice of Her Privy Council, to order, and it is hereby further ordered, that save and except only as aforesaid, all the subjects of Her Majesty and the subjects or citizens of any neutral or friendly state shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places wheresoever situate, which shall not be in a state of blockade, save and except that no British vessel shall, under any circumstances whatsoever, either under or by virtue of this order or otherwise, be permitted or empowered to enter or communicate with any port or place which shall belong to or be in the possession or occupation of Her Majesty’s enemies.”

1827. **TRADE BETWEEN THE ENEMY AND NEUTRALS. ENEMY’S SHIPS.**—The merchant is naturally anxious to preserve to the fullest extent immunity from the perils and confiscations of war, and freedom from the visits of the cruiser

and the privateer, and contends that even if the subjects of hostile nations are not to be permitted to traffic together, the peaceful ship of the enemy should not be interrupted in her intercourse with her neutral friends ; that the neutrals have an interest in the subject ; that they are entitled against each belligerent to say, " You shall not cut off this branch of our commerce."

This, then, is not a question simply between the belligerents, neutrals are interested in it. A neutral country may maintain only a passive commerce, importing and exporting entirely by the vessels of one of the countries involved in the war.

1328. It is said, too, that on the lands of the enemy there is no such confiscation of the property of the citizen who peacefully pursues his avocations. But the right of the merchant ship and private vessel of an enemy to traverse and convey its cargo and passengers over the sea, is not so free from difficulty or embarrassment as that of the peaceful inhabitants of a country occupied by the victor, to immunity for their lands and chattels. The latter right is founded on two distinct principles, of which the first and highest is the limitation of the extent of the right of war to what is necessary for the legitimate objects of war. The second is, that the victor having become the occupant, and as such the temporary sovereign of the country or district, is bound to treat the peaceful inhabitants as his subjects. The inhabitants of the conquered country have the benefit of both these principles; although in a former page we have relied only on the latter as abundantly sufficient to maintain their right. But the mariner and merchant traversing the waters has not the benefit of the second, inasmuch as he has not the title on which it is founded. He does not change even temporarily his allegiance on coming under the control of a hostile ship. His claim is to pass without change of allegiance from and to the ports of his own, and those of the neutral state. He cannot claim exemption from search,

because he may not under any circumstances carry munitions of war.

1329. The peaceful mariner has then to rely exclusively on the first principle, as matter of right. We shall have to advert to another as matter of policy, which may less strongly apply to some nations than to others.

1330. The first principle is sufficient under ordinary circumstances; but it is exposed to the extreme uncertainty of opinions, varying not only with the temper and notions of the men who have to decide upon it, but also in the opinions of dispassionate and impartial jurists as to the conditions which may necessarily and justly circumscribe and limit the right.

So long as men's minds are imbued with the inconsiderate bellicose and old prize-court notion, that everything is right and lawful which can in any manner distress, not only the military means, but in any direction the prosperity and happiness of the enemy, and all or any of his subjects, the right founded on the first principle, if acknowledged, is of little avail. But a wiser and more just generation will deal upon such sentiments the ignominy they deserve.

1331. We however will not attempt to conceal the difficulties which will at all times necessarily beset this right.

1332. The principal of these difficulties are the opportunity and temptation of clandestinely dealing in contraband and supplies of war, and of conveying information which may frustrate or embarrass the designs of the state. Articles which may not be prohibited to the neutral commerce as contraband or as inadmissible supplies, such as might in some degree prejudice the belligerent's action and enterprises, may be justly interdicted to his own subjects or those of the foe.

1333. These objections however do not apply to commerce between the belligerent and the neutral, even in the enemy's ships, with so much force as to the enemy's vessels frequenting the ports of the dominant belligerent, or passing from one to another of his own ports.

1334. **POLICY.**—The supposed interest of a nation is not admissible as an excuse for infringing a right, but it may prove an influential motive to maintain it.

1335. A powerful navy cannot exist without a large mercantile marine. The profit derived from capture must be contrasted with the losses which may be sustained. If the adversary's navy is feeble, his commerce can afford slender compensation for the injury which even a few ships of war, and those of the small and roving order, can inflict. If his merchant ships are many, his military capacity for mischief is proportionate. If the military and commercial fleets of the belligerents approach equality, their power of causing injury is on a similar scale. The prizes on either side can afford no compensation, even if given to the sufferers, for the losses which either endures. The result is, that all the military established for the process of plunder is an unprofitable expense; all the injury to vessels and merchandise, all the enormous charges of insurance, are only a reciprocal national waste. The trading vessels of each for the most part lie idle and rotting, while neutrals monopolize the carrying trade.

1336. And what is the value of the prizes when reduced by a glut in the market, while saleable only to neutrals, and the ports are crowded with unprofitable national ships? and how much is that value diminished by the deterioration and expenses of not the most careful custody, and the havoc of the courts of law? Nor is the distribution of the meagre residue calculated to increase the integrity of captors, it is a temptation to corrupt and mislead honourable men. Their rewards are slender, but the dignity of a nation were better consulted by a higher remuneration from the less burdened national purse for services braver and more noble than hunting down the defenceless merchant craft.

1337. According to the present practice of war, the belligerent confiscates every ship of the enemy which he captures beyond the waters of the neutral states.

1338. We have already shown that the ship has her own nationality; she may be held in shares by many owners, some of one country, some of another, such ownerships being more or less allowed by municipal laws; she is however of one nation only, that under whose sanction, whose credentials and flag she sails. As a consequence, if she is of a hostile nation, she is liable to confiscation in the entirety, although one or more shares in her may belong to a neutral or to a subject of the captor's country, or although a neutral or a fellow-subject may hold a mortgage or lien upon her. All who take shares or interest in her embark in a common venture, and characterize their interests by the flag she is entitled to call her own.

1339. Such is the law of the English prize court with regard to the vessel which bears a hostile banner, in accordance with the law of nations. It has been carried to the questionable extent of condemning the ship of a neutral owner because it bore the flag and pass of the enemy, which she had obtained before the war, and the English prize court violated this principle with regard to a neutral vessel for the benefit of its favourite captors, by allowing them to prove that a share in her belonged to the enemy, and condemning that share. *Primus. Industrie.*

1340. The court was more indulgent to the ship of a British owner, which was colourably transferred to an enemy when icebound, to protect her from seizure, she having been seized as Russian on her return to this country; but with an intimation that, had she been taken sailing under the Russian flag, she could not have been restored. *Ocean Bride.*

1341. Ships of neutrals engaged in the military service of the enemy are regarded as hostile. Even a neutral ship carrying shipwrecked enemies to their port on freight was held to be a transport in the employ of the enemy, and condemned. *Greta.*

1342. The belligerent confiscates all goods belonging to his enemy found on board the captured enemy's vessel. As

a general rule, the character of the goods depends upon that of the owner; if he is an enemy, they are enemy's goods; if he is a neutral, the goods are neutral. As the title to such goods depends, according to the law of nations, upon the genuine documents which travel with them,—the manifest, invoices, bills of lading, and the like, a neutral or a fellow-subject of the captor cannot assert against cargo appearing by the documents to belong to the foe any lien, charge, mortgage, or other right of ownership. With this principle the law of the prize court accords, except that it erroneously suggests a probable exception in favour of a fellow-subject's lien or latent claim. *Aina. Ida.*

1843. Moreover, the owner cannot assert that the documents are fictitious, and establish his neutral title, though real; unless he can prove that the fiction was adopted for a purpose collateral to the protection of his property against the ships of the captor's state. A subject may be relieved from the effect of documents fabricated to protect him from capture by the foe. *Whea. 414.*

1844. The goods of a subject employed in traffic with the enemy are regarded as enemy's goods. Such as had been left by a subject in the enemy's country beyond the prescribed period of withdrawal, for trading purposes, have, on exportation and capture, been so treated.

1845. The prize court has held that the property of a mercantile firm in an enemy's country was enemy's property, although the principal partner was a neutral. (*Whea. 408.*) This decision cannot well be questioned; but it has also inconsistently held that the property of a mercantile firm in a neutral country was enemy's property, because one of the partners was domiciled in the enemy's country, and consequently an enemy.

1846. Prize courts have held that the produce of a neutral's land in the enemy's country was enemy's property, and that it could not lose that character until sold to some other privileged person (*Phœnix. Anna Catherina. Bentzons sugar.*



Whea. 409-413), because, although it belonged to a neutral, it smelt of a hostile land.

1347. The belligerent is not entitled to confiscate the goods of a neutral found on board a captured hostile vessel. This, one of the fundamental principles of international law, based on dictates of reason, could not obtain general acquiescence before the declaration of Paris.

1348. The belligerent is not entitled to confiscate the goods of the enemy found on board a neutral vessel. Free ships make free goods. This also has at length been established by the universal voice of nations, amid the lamentations of the British courts of prize. We shall have to treat the two preceding points more fully in considering neutral rights.

1349. Then, as the enemy's cargo on board a hostile vessel is liable to confiscation, and the neutral's is free when the ownership is ascertained; we have to inquire whether the owner is enemy or neutral.

1350. The cargo is not, like the ship, an individuality, in which all the interests are bound together. One portion may belong to one, and another portion to a different owner. Each portion is to be dealt with according to the hostile or amicable relation in which its owner stands.

1351. If the owner is domiciled in the hostile country, he is for this purpose regarded as an enemy; if he is domiciled in a neutral country, he is regarded as a friend or neutral. The inquiry into what constitutes and what effects a change of domicile is too extensive for this treatise. But we may observe that with respect to the domicile of the owner of cargo, the prize court diverges, in some respects improperly, and in some respects necessarily and justifiably, from the general law of domicile.

1352. Every one who continues to reside and carry on his trade in an enemy's country, although the consul of a neutral state, is regarded as an enemy. Aina. Abo. Emilia.

1353. ENEMY'S PRODUCE AND MANUFACTURES.—Tra-

ding with an enemy, and trading in the produce and manufactures of the enemy's country, are obviously distinguishable. Such produce may be purchased from a neutral, who had previously purchased it from the enemy ; in this case the purchase is from the neutral owner, from a friend, and the place of origin of the property, the antecedent ownership, the price which the neutral paid, the market in which he bought it, the mode of conveyance to the port of shipment, its further or ultimate destination, are manifestly immaterial ; for the neutral is entitled to purchase it in the port of one belligerent and convey it for sale to the port of the adversary, for both are equally his friends.

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## CHAPTER IX.

### ALLIES.

1354. THERE are two kinds of alliance, defensive and offensive.

1355. A treaty of defensive alliance only binds the contractor to aid in resisting a war commenced against the party whom he has contracted to aid. By commenced, we mean caused,—not formally commenced, for the preparations of one country may render it necessary for the other to anticipate a meditated invasion. He is not bound to aid in a war created by the ally's own provocation, injustice, or aggression ; but he cannot evade his contract on any shallow pretence ; he is bound to regard his ally as in the right unless he is manifestly wrong.

1356. A treaty of offensive alliance is a contract engaging co-operation in war, either immediate, prospective, or conditional, against some particular Power or Powers. Such treaties are numerous, and in general define the terms, contingencies, and conditions.

1357. Treaties may be offensive and defensive, as offensive treaties necessarily to some extent are.

1358. These treaties sometimes stipulate for aid by good services ; that failing, with stipulated marine or land forces ; that failing, with open declaration of war and assistance, with all the vigour they can employ.

1359. Strictly speaking, the relation of allies refers to the actual raging of war, as during general peace the various alliances existing between nations, however influential, are inoffensive to others.

1360. All the allies are enemies of the common enemy, and consequently the subjects of neither of the allies can carry on commerce with the common enemy without the sanction of the sovereign authority of all the nations engaged in the alliance.

1361. The offending vessel of any one of the allies is liable to capture by the cruiser of its own nation, or of any other of the allied nations, and to condemnation in the prize-courts of either of the allies.

1362. All the allies on one side stand confronted with all the allies on the other. Each set of allies, to a certain extent, constitute one belligerent ; and as such, any of the allies on the one side is entitled to treat and to capture the vessel and goods of any of the allies on the other, as if two nations only were engaged in the conflict.

1363. And their relations to neutral powers are similar. But both with regard to enemies confederated in the alliance and to neutrals, each of the allied nations may be bound by antecedent conventions, and special engagements in treaties, even affecting the conduct of war, as though each of the belligerent nations were warring only against that included in the treaty, or as if it were not associated with belligerents whose relation to the neutral is different. All those allied with a nation so bound must respect, so far as his conduct is concerned, the conditions of the treaty.

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## CHAPTER X.

## CONFEDERATES.

1364. TREATIES of alliance or federation may constitute, as already appears, a relation less close than that of entire concurrence in actual war. Nations may contract for a general combination in a war either offensive or defensive, or they may contract only for such combination under contingencies or conditions which may not have arisen; the contract may be for limited assistance or subsidy in a war with any nation, or with a particular nation, in certain eventualities, with a stipulated naval or military force, and with conditional increase or diminution under other circumstances.

1365. Whatever be the effect of these treaties, the contracting parties are bound to perform them. Nations are assumed to be acquainted with the treaties and conventions existing between others, as well as those to which they are parties; although it does happen that there are sometimes secret stipulations not in conformity with international faith.

1366. Each of two bellicose nations making their preparations has to consider the position of other nations, whether any of them are bound by treaties of alliance, or of subsidy or assistance, which may qualify the neutrality which it would be their duty otherwise to observe. For if his contemplated adversary A. has contracted with nation B. for the aid of 20,000 troops, and with nation C. for the assistance of twenty ships of war, and limited stores in ammunition and arms, he must be content to encounter those forces of B. and C. confederated with his enemy, and to fight their vessels which convey such contraband of war; and yet in all other respects to regard B. and C. as his friends, or to abstain from the contest, or he must prepare for battle with all the forces of the confederation. The contract of a

nation to supply munitions of war does not protect its subjects in resisting the search for, and seizure of, contraband. The subjects must observe strict neutrality.

1367. It is possible that inconsiderate treaties may have involved a prince in intricate complications; they may entangle him in the obligation to afford limited assistance to each of the contending parties. If so, the faith of treaty must not be violated. But his troops are not to confront each other in battle, like the divided bands of hired condottieri. Are his own regiments to encounter each other in the deadly charge? Are his own crews to board and destroy his own vessels? Necessity requires that he should only aid, with the amount of the difference in forces, that one of the contracting nations which was entitled to demand the most extensive assistance; and if the amount stipulated to each be equal, he performs his contract by remaining absolutely neuter.

1368. A neutral under such conventions with one of the belligerents violates his neutrality by affording an assistance in excess of what he is bound to afford. But so long as he confines his assistance to the quota which he has contracted to furnish, in soldiers, ships, or supplies, the belligerent, whatever his damage, is not entitled to complain. As to the military outfit, the confederate is an ally of the belligerent he aids, and an enemy of the adversary; in all other respects he is the friend of both. The expedition which he furnishes in vessels and men is an element of the war, a part of his confederate belligerent's force, to assault and slaughter the adverse belligerent's forces, and to encounter the hazard of destruction and defeat; in all other respects the confederate is a neutral, and all his amicable relations with both of the belligerents remain undisturbed. The condition of a confederate is ever a precarious state.

1369. Under the head of confederacy must also be ranked the conventions containing stipulations by which the con-

tracting Powers secure to each other any privileges inconsistent with their strict neutrality towards other Powers, in the eventuality of a war in which either of the contracting parties may be engaged, such as transit across their territories or maritime dominions ; to advance against, or pursue, or to retreat, or take refuge from the adverse belligerent ; permission to hire or enlist soldiers or sailors ; to fit out or arm, or increase the armaments of vessels of war ; to supply with arms, to introduce and sell prizes in its ports ; or any military advantage or convenience which is to be denied to the adversary ; in fact, any stipulation inconsistent with the normal condition of a strictly neutral nation.

Such conditions constitute valid qualifications of neutrality, and must be respected by the belligerents, on the ground that they are known conditions on which they enter upon hostilities. Therefore secret conventions of that character are unlawful, especially if made on the eve of, and in anticipation of, a war.

1370. But nations are not bound by the classifications of authors. They are not obliged to abstain from considering the justice of the war, or how their interests may be affected, although they are bound to act as if both belligerents were justified, so long as they continue neutral. Each nation may on the outbreak, or at any period of the war, declare that she will assist, or permit her subjects to assist, one of the belligerents ; and that she will not assist, or permit her subjects to assist, the other. She has a right to assert the freedom of her commerce, and to declare that, in defiance of the cruisers of either belligerent, her merchant ships shall traverse the ocean unquestioned and unsearched, and that they shall enter the blockaded ports uninterrupted and unassailed. She has a right to interdict the interference of the ships of war of either belligerent, or of both. The belligerents must accept the conditions under penalty of additional warfare. Neither of them has a better right to quarrel than all other nations have, separately or combined,

to determine and to alter the attitude they will assume, and the extent to which they will endure the disturbance occasioned by the quarrel.

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## CHAPTER XI.

### NEUTRALIZATION.

1371. The neutralization of a country or district differs from neutrality. It is a condition in which the country or place is put by compact between several nations. The state of each neutralized country depends upon the special terms of the compact of its neutralization. It in general loses some of the powers of independent action, and is compensated by the protection of the Powers which have taken part in that compact, and often by the privilege of immunity from hostilities. Of course, it cannot by any compact be deprived of the right of self-defence against insult or invasion.

1372. Switzerland is placed in this condition by the final Act of the Congress of Vienna, March 20, 1815, and the declaration signed at Paris on November 20, 1815; by which England, Austria, France, Russia, and Prussia recognized the perpetual neutrality of Switzerland, and guaranteed the integrity and inviolability of her limits as then settled.

1373. The perpetual neutrality of Belgium was, on its severance from the Netherlands, secured by the five great Powers of Europe, and made an essential condition of her independence.

1374. In 1815, the Congress of Vienna declared the city of Cracow, with its territory, a perpetually free, independent, and neutral state, under the joint protection of Austria, Prussia, and Russia, on certain conditions. How these conditions have been observed, or how the protection has been

afforded, and whether the subsequent treatment of this city is in accordance with the law of nations or the spirit of the declaration, are subjects beyond the limits of this treatise.

1375. The Black Sea has been, as already stated, placed in a state of neutrality as a part of the ocean, with the exclusion of any considerable maritime force.

1376. Turkey is not in precisely the situation of a neutralized nation, but her position is rendered peculiar by the treaty from which extracts have been already given.

1377. By the treaty between England and the United States, April 19, 1850, as to the then projected ship-canal across the Isthmus of Central America, it was stipulated (art. 2) that vessels of Great Britain or the United States traversing the canal should, in case of war between the contracting parties, be exempted from blockade, detention, or capture by either of the belligerents; and it was agreed that this provision should extend to such a distance from the two ends of the canal as it might thereafter be found expedient to establish. The 5th article provides for the protection of the canal, and that it shall be for ever open and free, on equal terms. The 8th article provides that, should a railway be constructed, it should be protected and open on equal terms to subjects of all nations.

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## CHAPTER XII.

### NEUTRALS.

#### SECTION 1. RIGHTS AND DUTIES.

1378. The war has broken forth, and each nation has determined, at least temporarily, the position it will assume. The rights and duties of the neutrals with reference to the



belligerents, the rights and obligations which war acquires against and imposes upon them,—what are they ?

1879. Had, for the last century, the only wars of Europe raged between petty maritime states, while all the great nations were neutral, and troubled in their commerce by the puny combatants, a different practice of nations, and in that sense a different code of international law, would have prevailed. We should have heard louder proclamation of neutral than of belligerent rights. But whoever the combatants, whatever usurpation there may have been upon them, the rights are unalterable and the same.

1380. A nation can neither acquire to itself, nor confer on its adversary, any right against the neutral by making war ; otherwise it would achieve, however feeble, a conquest for itself and its opponent over all neutral nations, before either had captured a shallop or won an inch of territory. Except to the extent of conventional obligations, which we have discussed under the head of confederacy, the neutrals maintain as to each of the belligerents, and each of the belligerents maintains as to the neutrals, the same amicable relations as before.

1381. The neutral may meditate on the justice or injustice of the controversy ; the neutral government and all its subjects may sympathize with one of the belligerents and detest the other, and talk about their conduct and affairs ; but in their own conduct they must act as if the cause of each of the belligerents were equally just.

1382. The rights of the neutral nation are,—that her sovereignty shall not be infringed or insulted, and that neither her commerce, nor any other of her amicable relations shall be disturbed, except so far as they interfere with the legitimate conduct of the war. The rights of each belligerent are,—that the neutral shall maintain towards it the same amicable relations as before, and that neither the neutral state nor its subjects shall aid the enemy in the article of war. The neutral must not attempt to aid each equally,

for the equalization of such assistance is impossible. Yet emergencies do occur in which some benefits of a military character cannot be withheld; where they occur, the neutral must be impartial to both, and not deny to one that which the other obtains.

1883. Some of the rights of the neutral nation belong to the people as individuals, and some to the state; so some of its duties are to be observed by the citizens and some by the state. Neutral rights and duties may be classified as rights and duties of the state, and rights and duties of the subjects. And, as rights and duties are reciprocal, this classification will exhibit many of the rights and duties of the government and people of the belligerents; and we shall have to consider the consequences of their conflicting rights, under the heads of contraband, blockade, search, and capture.

#### SECTION 2. RIGHTS AND DUTIES OF THE STATE.

1884. The neutral public ships have the same right to visit the waters and ports of each belligerent as before the war; but that right, previously subject to qualifications, may be further qualified through an increased apprehension of danger on account of the strength of the neutral force, or the uncertainty of political relations. The belligerent is entitled in such case to confine their admission to certain ports, and under reasonable restrictions, or, if necessary, to entirely exclude them from his coast, except when driven upon it by distress. But when they are admitted they must be entertained with the former respect.

1885. This respect involves the total exemption of public vessels from visitation and search. Far more are they exempt from that indignity on the open sea, where they are as independent as the belligerent ships. Visitation for the purpose of inquiry merely, may, under circumstances, particularly in the case of convoy, be conceded, but it cannot be enforced. Even in such case the signal must be that of

invitation, not of command. A blank cartridge may be fired, lest the signal of the flag may have been unobserved; but the firing of a shot at, or the menacing pursuit of a public vessel cannot be endured. Search of the neutral ship of war can in no case be permitted,—it is derogatory to the independence of the state. Search of private ships under convoy may be conceded on conditions to which we shall refer.

1386. The right to maintain and protect the national commerce is the right of the state; the right to enjoy it is that of the subjects.

1387. The state is not a trader; even were its prince a merchant, his mercantile vessels and merchandise would be private merchandise and private ships, until he chose to give them a military commission. The state cannot carry contraband; the state cannot be guilty of breaking blockade. If the state furnish, whether by gift or sale, munitions of war to either belligerent, it is not contraband, but military assistance, a breach of neutrality, a just ground for war; if the public armed ships of the state force, or attempt to force, their way through the blockade, it is irregular war; if they clandestinely escape through the blockade, they cannot be pursued or captured, but the state must make reparation for the wrong, or it affords a just ground for war.

1388. So that which would be contraband on board private unprotected merchant ships, when conveyed in merchant ships under the protection of the public vessels of the neutral, constitutes military supply, and a violation of belligerent rights. The ships which sail under convoy, except in conformity with conventions, are not independent traders, but members of a national fleet; they are responsible to their sovereign for their cargoes and conduct, and the sovereign is responsible to the belligerent state as though their misconduct were his own.

1389. CONVOY.—Subject to the undertaking of such responsibility, the neutral nation is entitled to take her com-

merce under her protection and her flag as long as it traverses her own waters or the open sea. Ships are not the independent creatures which some writers have asserted; they are subjects of their country wherever they go, amenable to and entitled, so long at least as they obey it, to the protection of their state. Were it otherwise, every vessel might wage an independent warfare, and the nationality to which belligerents appeal would not exist.

1390. A neutral nation is entitled to demand the absolute recognition of her sovereignty, and to protect her commerce with all her power, to extend her ægis over her private vessels, and to prohibit visitation and search. She takes upon herself a duty towards each belligerent for every vessel, for every member of their crews, and for every portion of every cargo, that there shall be no offence, and that the expedition shall not convey to the adversary any military aid. If that duty is violated, the responsibility to the injured belligerent, as we have already observed, rests upon the state.

1391. So great is the inconvenience, so difficult, so almost impossible is the security for the performance of the duty it undertakes, so full of suspicion is a convoyed fleet with total immunity from search, that the state, anxious to maintain her neutrality and character, will not resort to this proceeding except in extremity, and when prepared to vindicate her conduct by open war. But if there is just cause, by reason of vexation in the exercise of visitation and search, or in the imposition of an unlawful blockade, or in the unjustifiable condemnation of her vessels, or in the refusal of indemnity to those which have been captured without having given offence, the neutral has a right to place her merchantmen under the protection of her flag, to forbid the interference of the marauding belligerent with her ships, and to summon all the insulted neutrals to her aid in maintaining the neutral law. We need not stay to inquire to what extent the armed neutralities of the North were justified, or whether they in any respects exceeded the vindication of

neutral rights. The first example of such a neutrality was afforded by Rhodes.

1892. The exercise of this right obviously brings the nations upon the verge of hostilities, as each will act upon her own construction of international law, or, perhaps, her appreciation of her opportunity and power. The neutral nation must therefore offer the belligerent every practicable guarantee. Her laws against the export of contraband must be rigorous, and vigorously and impartially enforced. The examination of the vessels under convoy must be rigid and frequent; every ship must be identified, her character, her conduct, her cargo carefully recorded and vigilantly watched; and the whole fleet must sail, and, so far as possible, continue under the immediate protection and surveillance of the vessels of war. The commander of the convoy must hold frank and candid communication with the commanders of all the belligerent vessels who may inquire as to the destination and cargoes of the fleet.

1893. The question of the right of sailing under the convoy of her own nation is not a question for the prize court, but a question of politics, to be determined by the state: until the state has resolved to make it, and made it, a cause of war, the prize court may not usurp its office or treat the act as a hostile act, or in any manner interfere. The question is not with the neutral vessel, but with the neutral state. So long as the governments are at peace, to capture the neutral ship under convoy is an act of piracy, to condemn her is an outrage upon international law. Notwithstanding the trumpeting with which it was paraded, the condemnation of neutral vessels, in the case of the *Maria*, for sailing under the convoy of their national ships, covered the English prize court with disgrace.

1894. When it is adopted under conventions, the extent and mode of relieving the merchant vessels from search is carefully explained. It is generally required that they shall be under convoy of a ship well informed of all their charac-

ters and cargoes. Her commander is bound to see that all belong to his nation, that their destinations are free from suspicion, and, if destined to a belligerent port, that they carry no contraband of war. And he is bound to afford that assurance to every war-ship of the belligerent concerned in the treaty, which he may happen to meet.

1395. Unless it is accorded by treaty, or agreed, on an alliance of neutral nations for the protection of their rights, the convoying ship cannot take under her charge any vessel, though neutral, which does not belong to her own country. She must not permit a neutral of another nation to obtain in any manner the protection of her flag. The belligerent cruiser is entitled, without inquiry, to believe that the convoy can give the assurance which it is her duty to give; her flag in effect offers it. To permit the association of the neutral vessel is therefore a breach of the honour of her commander, and of his nation's faith.

1396. The master or commander of any merchant ship under convoy wilfully disobeying any signals, instructions, or other lawful commands of the commander of the convoy, or deserting the convoy without notice and leave obtained, is liable in the English Admiralty to a fine not exceeding £500, and imprisonment not exceeding one year. 17 Vict. c. 18, s. 40.

1397. **BELLIGERENT SHIPS.**—Each belligerent has the same right to visit the waters and ports of each neutral state with his public vessels as he enjoyed before the war; but as his attitude is altered, the neutral is entitled to place such ships under restrictions which did not previously exist. These vessels, when admitted, must be entertained with the same respect as before the commencement of hostilities. But the neutral may restrict their visits to convenient ports, or, if there is reasonable apprehension of danger, altogether exclude them, except when driven in by distress. If he restrict the ships of one belligerent to particular ports, he must equally restrict those of the other; if he entirely

exclude those of one, those of the other must be excluded, unless there be such cause of suspicion as to the one as to justify the neutral's putting himself more on his guard against the excluded nation. To this extent only we admit the proposition (*Santissima Trinidad*), that a neutral government is not bound to admit belligerent ships of war within its waters, and that it is entitled, if it admit them, to prescribe the terms of admission. The sixteenth congress of the United States (sess. 1, c. 110) restricted for two years the entrance of foreign armed vessels into any of its harbours except Portland, Boston, New London, New York, Philadelphia, Norfolk, Smithville in North Carolina, Charleston, and Mobile, unless forced by distress, by dangers of the sea, or by being pursued by an enemy, and unable to make any of the excepted ports.

1398. The state is bound by its neutrality not to permit a naval force to pass over its waters to invade or attack the adversary. All agree that it is entitled to prohibit such passage; but some assert that it is at liberty, according to the law of nations, to permit it, on condition that it grants similar permission to the hostile state. The proposition is incorrect. How can there be equality in such a concession, even if a neutral were at liberty to afford equal aid in war? The invaded nation may be conquered, or never able to claim the supposed equivalent. How can there be equal enjoyment of such a right?

1399. When the ships of one belligerent are admitted into the harbours of a neutral, those of the other are, except under circumstances of suspicion, entitled to the same privilege in every respect. They must enter the neutral waters in amity, the authority of their sovereign is confined to their internal government and their crews, and the courtesy which they are entitled to expect.

1400. Within those waters the ships of both belligerents are subject, with this qualification, to the neutral law, and entitled to the protection of the neutral state. The hostile

vessels may sail together into the same neutral port, land and embark at the same quay, receive their provisions and repairs in the same dock, and their officers and men may enjoy the festivities of the same table in transient peace. These waters are a sanctuary and asylum, within which no hostile attack may be made. As soon as two ships engaged in battle float upon the neutral wave, the conflict must be discontinued, the hostility must instantly cease. They are temporarily denizens of the neutral nation, amenable to the neutral law. It has been said, that if the conflict is continued, the victor may retain his prize. But the assertion is unwarranted. Whatever reparation the neutral may demand for the outrage committed by the vanquished, the victor cannot be permitted to drag his captive from the insulted realm.

1401. Within the neutral territory there must not only be no war, but no preparations or contrivances for war; there must be no hostility; the war-ship, within the presidial boundary, cannot send her boats or tenders to capture an enemy, though beyond that limit.

1402. There consequently must be no pursuit, no preparation for pursuit, by one belligerent of another out of a neutral port. The usual practice is to require an interval of twenty-four hours between the departure of two hostile ships. The weaker vessel, if ready, is entitled to depart first, lest the neutral territory should be insulted by the hovering of the enemy on the verge of her domain.

1403. When the peace and sanctuary of the neutral state has been violated by capture within its marine territory, redress belongs to the law and the courts of the insulted state, which restores the prize on its own conditions if it come within its power, or demands restoration from the nation of the captor, if withdrawn from its own direct jurisdiction.

1404. As the injury may not unfrequently be unintentionally inflicted through ignorance of the precise distance



or limit of the neutral waters, provisions are common in treaties with reference to the exclusion of hostilities and the restoration of captures made within the presidential line.

1405. The belligerent ship admitted into the neutral port is entitled to repair all damages she may have sustained, to refit, to victual herself, and to obtain all she may require as a vessel of peace. Not only is she not entitled to obtain, but the law of nations prohibits her being furnished with, any military assistance; not only she must not be improved, she must not be renovated as a ship of war; she must not be furnished with guns or weapons of any kind, with ammunition or military stores, not even with a supply of provisions or fuel to enable her to cruise against her foe; she may not change her guns or weapons for others, even of the same kind; she must not recruit her military crew; she may, if exhausted by fever or loss, be permitted to engage sufficient mariners to enable her to work her way home, but she must not be supplied even with the military means of defence.

1406. It is the duty alike of the neutral citizens and of the neutral state to abstain from furnishing such supplies. The adverse belligerent cannot intercept them, as contraband of war, within the sanctuary of the neutral port; and, inasmuch as the ship to which they are furnished is, to a great extent, under the control of the public officers of the port, it is the duty of the state not only to abstain from affording, but to prevent its subjects from furnishing, such supplies. Its omission to do so is a breach of neutrality in rendering military aid.

1407. It is necessary, therefore, for the states to restrain their subjects from offending in this respect. The English Foreign Enlistment Act (sec. 8) declares guilty of a misdemeanour, punishable by fine and imprisonment, or either, any person who, without the royal licence, in any part of the British dominions, "shall, by adding to the number of the guns of such vessel, or by changing those on board for other

guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruiser or other armed vessel, which, at the time of her arrival in any port of 'the British dominions,' was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people, belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of government."

1408. We have given the provisions of this section at length, as it omits all allusion to the state of war.

1409. The United States Act of the fifteenth Congress, stat. 1, c. 88 (20th April, 1818), declares guilty of a high misdemeanour any person who, within the territories of the United States, should increase or augment, or procure to be increased or augmented, or knowingly be concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel at the time of her arrival in the service of any foreign prince, or belonging to the subjects or citizens of any such prince, etc., the same being at war with any prince, etc., with whom the United States are at peace, by adding to the number of her guns, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipments solely applicable to war.

1410. An augmentation of the force of a belligerent vessel by enlistment of sailors into her crew was held to be a violation of this Act, although no increase was made in her armament; and the enlistment of a crew for a tender already armed, purchased in the neutral port by a belligerent vessel for a tender, has been held to be the augmentation of the

military force of the belligerent ship. *Santissima Trinidad*.

1411. PRIZES.—All writers agree that the admission of prizes into neutral ports is not a belligerent right. Some assert that the neutral may permit one belligerent to bring in his prizes and refuse that admission to the other. It seems to be generally assumed that it is permitted to both unless prohibited. It appears to us that it is the duty of the neutral to prohibit it altogether, except in cases of distress; for it is undoubtedly affording an advantage to a belligerent in the conduct of the war, which can by no possibility be dispensed to both with an equal hand. It were almost as consistent to permit the fitting out of military vessels. If, however, it is granted to one, it must, on the first principle of neutrality, be conceded to the other.

1412. Prizes, when permitted to be introduced, cannot be received on the same footing as ships of war. There is an anomaly in the relation in which their inmates stand. The subjects of one nation holding those of another captive, within the dominions of a third, perhaps the captured vessel a neutral also. There is a greater anomaly when a belligerent brings in, as her prize, a vessel belonging to the country into whose ports she is brought on her way to the belligerent prize court to be tried, perhaps condemned, on a charge, perhaps false, or on grounds perhaps not recognized by her own nation, of violating the law of blockade, or carrying contraband of war.

1413. The sovereign right accorded to the public ship cannot be extended to her prize. The prize is liable to be dealt with in many respects by the courts of the country into which she is brought.

1414. If she be a ship of her own nation, she must be liberated. The sovereign cannot permit his subjects to be held captive by a stranger in his own land; he cannot permit his ships to be dragged through his own dominions to be tried in a foreign tribunal.

1415. If she was captured within the waters of the nation she must be liberated, whether she be the ship of a neutral or a belligerent, for they are alike friends of the neutral. The Duke of Tuscany condemned a Dutch ship for capturing her English adversary within the waters of his realm. (*Santissima Trinidad*.) His proper course was to release the captured vessel, and demand satisfaction from the state to which the captor belonged.

1416. She must be released if she was captured in violation of any right of that neutral nation, as by a ship illegally fitted out from its ports, or if she was captured by a belligerent ship whose armament was augmented in that neutral country, provided that she was captured in the first voyage after the outfit, or in the cruise in which the armament was augmented; but after that voyage or cruise is completed, the offence is, for this purpose, purged. *Santissima Trinidad*.

1417. Her prize may be taken from her, but the public vessel of a belligerent Power, although originally fitted out or subsequently armed in contravention of the neutral law, cannot be condemned or prosecuted in the neutral country in respect of her captures. (*Cassius. Invincible*.) The neutral is entitled to employ military force to wrest his prey from the captor, and to pursue and wrest the prize from him on the ocean. But the pursuit must cease on the captor's entering the waters of his own or any other nation. The prize must be demanded by the neutral state, not her owners, from the nation of the captor, which is bound to make restitution, except of the ship of the neutral which had been captured on the ground of conveying contraband, or violation of the law of blockade. The lawfulness of such a capture must be determined by the captor's court.

1418. The court of the neutral country will restore the illegal prize, not only on the application of her government, but at the instance of her owner. *Santissima Trinidad*.

1419. PRIVATEERS.—Pirates, according to the silent but immutable law of nations, but by reason of the innate love

of plunder, and the incessant practice of maritime peoples, licensed pirates; at length, by the deliberate and dispassionate voices of England, France, Russia, Austria, Prussia, Sardinia, and Turkey, in 1856 proclaimed,—and by the voices of almost all other nations since again and again proclaimed,—pirates who cannot be licensed. If these sea-marauders bring any victim into the port of any country which has recorded her assent to the law of reason and of nations, they must be deprived of their booty; and, notwithstanding the withholding by the United States of her acquiescence in that law—for her reticence can give her no right to plunder the nations of Europe—notwithstanding the atrocious enormity designated an Act of Congress (3 Mar. 1863), unless the nations will quail and cringe and crouch still lower before an insolent and frantic Power, which daily violates every law of humanity and transgresses every right of semi-civilized warfare, they must be executed as pirates.

The commission of a privateer was never recognized as constituting her a public ship (*Santissima Trinidad*); her captain was not an officer of the sovereign, he merely carried a licence, called a commission, to pillage, which other nations, granting such licences, therefore respected. But it is void by the law of nations at length proclaimed. Privateers “are abolished;” they have no right to search, far less to capture. The merchant ships, though loaded with contraband, are entitled to resist and destroy them. The armed ships of all countries should chase them from the seas, and bring their banditti to justice.

1420. ARMAMENTS.—We must keep carefully in view the distinction between the obligations which the law of nations imposes on the neutral state, and the obligations which, for the preservation of its own peace and honour, that state may impose on its citizens.

1421. The former are limited to the prevention of the departure of ships or levies of war from the neutral ports

or territorial frontier, and the repression of preparations among its subjects which assume a menacing attitude; the latter may extend to all such precautions as its legislature may deem expedient to enable it to maintain the law of neutrality, and to crush attempts which might involve it in the infraction of its duty towards the belligerent, before the armament is complete, or the recruits are embanded and drilled.

1422. The belligerent must not trespass upon the terrene or the maritime dominions of the neutral to repress armaments, however formidable, in progress of preparation there. He must not invade the neutral state. It is for this reason that the neutral is bound not to permit any armament, organized under the protection which its sovereignty affords, to issue forth. The neutral is further bound, in courtesy, and to avoid suspicion of its own designs, to repress menacing preparations under the shelter of its shield.

1423. The belligerent is entitled to regard an armament fitted out or in preparation against him, under the protection and with the connivance or full knowledge of the state, as being fitted out or in preparation, by or under the authority of the state, and as a breach of neutrality. The duties are reciprocal; the belligerent is bound to abstain from raising soldiers or military mariners, or equipping vessels of war within the neutral state. If a belligerent violate that duty, he cannot complain of any degree of supineness which the neutral may manifest as to any such military preparations or equipments on the part of his foe. He who has violated the law as against his adversary cannot appeal to it for his own protection. Nor is it necessary that his offence should be of precisely the same character with that of which he complains. If he enlist soldiers, he cannot complain that his adversary is not interdicted from the equipment of ships. But the belligerent who has purchased whole parks of artillery, and ammunition by hundreds of tons, may demand the interposition of the neutral

to restrain the sailing of a war-ship in aid of his antagonist ; for the purchase of contraband is legal, the marine outfit is a violation of public law.

1424. The 15th Congress, stat. 1, c. 88 (1818), declares guilty of a high misdemeanor any persons who should, within the territory or jurisdiction of the United States, begin or set on foot or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district or people with whom the United States are at peace.

1425. It also declared guilty of a high misdemeanor any citizen of the United States, who, within their territories or jurisdiction, should accept and exercise a commission to serve a foreign prince, state, colony, district, or people in war, by land or by sea, against any prince, state, colony, district or people with whom the United States were at peace ; and any person who, within their territories or jurisdiction, should enlist or enter himself, or hire or retain another person to enlist, or to enter or to go beyond the limits of their territories, with the intent of enlisting in such service as a soldier, or as a marine or sailor on board any vessel of war, letter of marque, or privateer ; except foreign subjects transiently within the United States, who should, on board a vessel of war, letter of marque, or privateer, fitted out as such at the time of its arrival, enlist other subjects of the same foreign state transiently within the United States, and also the persons so enlisted.

1426. It also declared guilty of a high misdemeanor any person who, within the limits of the United States, should fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or knowingly be concerned in the furnishing, fitting out, or arming of any vessel, with intent that she should be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens,

or property of any foreign prince, etc., with whom the United States are at peace, or should issue or deliver a commission for any vessel, to the intent that she should be so employed. And it declared forfeited the vessel, with all her materials, arms, ammunition, and stores.

1427. It was held that the sailing from a port of the United States with a vessel fitted out, but not armed or manned, so as to be able to act as a privateer, with the intention of arming and manning her for that purpose at a port beyond the territories of the United States, was a misdemeanor within the provision last cited. The offender was indicted as knowingly concerned in the fitting out or arming of the vessel. *United States v. Quincy*.

1428. It was held that this Act did not affect the right of the subjects to equip vessels of war, and to send them furnished with arms, as commercial speculations, into a foreign port for sale. Their right to do so was checked only by the liability of their vessels to be captured as contraband. *Santissima Trinidad*.

1429. The previous American Act of 1794 had the words "any foreign prince or state" only, not the words "or of any colony, district, or people." And in *Gelston v. Hoyt* it was held that, until it had been recognized as an independent state by the government to which it had belonged, or by the government of the United States, however independent it might in fact have become, that which had been must be still regarded as a colony; and that until such recognition courts of justice were bound to consider the ancient state of things as remaining unaltered (citing *Rose v. Himely*; *Manilla*; *City of Berne v. Bank of England*; and *Dolden v. Bank of England*). And it was therefore held (1818) that a ship fitted out and armed, to be employed in the service of that part of St. Domingo which was under the government of Petion, to cruise and commit hostilities against that part of the island which was under the government of Christophe, was not within the prohibition.



This defect in the Act was remedied by that of 1818, and guarded against by the English Enlistment Act.

1430. That Act, 59 Geo. III. c. 69, s. 2, declares (in a profusion of words which we endeavour to abridge) guilty of a misdemeanor, to be punished with fine and imprisonment, or with fine or imprisonment, any natural-born English subject who, without the royal licence, under the sign manual, or signified by Order in Council, or by royal proclamation—(1st) accepts or agrees to accept, or goes or agrees to go abroad with intent or in order to accept, any military commission, or enters or goes, or agrees to go abroad with intent to enter, as a commissioned or non-commissioned officer, or goes or agrees to go abroad to enlist, enlists or agrees to enlist, to serve as a soldier, sailor, or marine, or to be employed in any warlike or military operation, in the service of or on board any vessel of war, or vessel intended to be used for any warlike purpose, under or in aid of any foreign power, province, or people, or person, assuming to exercise the powers of government, although no enlisting money, pay, or reward, shall have been received; (2ndly) any person whatever who, within any part of the British dominions or colonies, hires, retains, engages, or procures, or attempts to hire, or engage, or procure any person whatever to enlist or enter, or engage to enlist, or to serve, or be employed in such service or employment as an officer, soldier, sailor, or marine, either in such land or sea service, or to go or agree to go abroad, for the purpose or with intent to be so enlisted or engaged. Sec. 2.

Justices of the peace are authorized to issue warrants for the apprehension of offenders, and to take measures for their being brought to justice. (Sec. 4.) The principal officers of the customs, and, where there are no such officers, the governors, or persons having the chief command, are authorized to detain, on information on oath, any vessel which shall have on board any persons who have enlisted, or are going abroad for the purpose. And the master of any vessel

knowingly receiving such persons on board, is liable to a penalty of £50. Secs. 5, 6.

1431. These provisions, so far as they refer to the entering or agreeing to enter, or the procuring of others to enter into the service of one belligerent, against another with whom the sovereign is at peace, are merely municipal ordinances to empower the sovereign to restrain his subjects in conformity with his obligations under the international law. His licence relieves his subjects from punishment under the statute ; but his omission to restrain them from leaving his ports in arms involves a breach of neutrality towards the injured state.

1432. The English Foreign Enlistment Act (sec. 8) declares guilty of a misdemeanor, punishable by fine and imprisonment, or fine or imprisonment, and forfeiture of the vessel, with all materials, arms, ammunition, and stores on board, any person who, without the licence of the Crown, in any part of the British dominions, (1st) equips, furnishes, fits out or arms, or procures to be equipped, furnished, fitted out or armed, or assists in equipping, furnishing, fitting out or arming, any vessel, "with intent or in order that she shall be employed in the service of any foreign power, province, people, or person, assuming to exercise the powers of government," as a transport or store ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom England shall not be at war ; (2ndly) issues or delivers any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid.

1433. Any officer of the customs or excise, or any officer of the Navy, who is by law empowered to make seizures for

forfeiture under the laws of customs or excise, is authorized to seize such ships.

1434. The vessel is to be prosecuted and condemned according to the customs, excise, and navigation laws.

1435. The only prosecution which has occurred since the passing of this Act was instituted in this present month of June, and the owners of the *Alexandra* were acquitted. The Chief Baron Pollock, who tried the case, expressed his opinion, that if she was built for sale, or on contract to be sent from England unarmed, though to be armed elsewhere, the law was not infringed; that it would not be violated unless she was to be furnished, fitted, and equipped and armed in England.—*Times*, 25th June, 1863.

1436. It is the duty of neutral governments, and their general practice at the breaking out of a war, to admonish their subjects and others of the restraints which are imposed upon their conduct by the municipal law, and also of the dangers they will incur by transgressing the law of nations, or entering upon contraband trade.

1437. In some cases, and to some extent, the belligerent may, directly or indirectly, appeal to the municipal law, as by prosecuting, or procuring the prosecution of indictments in the ordinary courts. When, or to the extent in which such remedy is not open to him, he must invoke the interposition of the neutral state; and on sufficient information, require it, in conformity with its neutral duty, to put its powers over refractory subjects in force.

### SECTION 3. RIGHTS AND DUTIES OF THE SUBJECT.

1438. The subjects of a neutral state are not directly responsible to a belligerent for anything done within the limits of their own country, whether on land or on the neutral margin of the sea. Within these limits the subjects are mere molecules of the mass constituting the nation, which cannot be injured without injury to the whole. The sovereign is responsible for their conduct, and they are re-

sponsible to the municipal law. This rule extends to all foreigners resident within the neutral nation, except such as are amenable, on their allegiance, to the belligerent state. If the belligerent deem himself aggrieved by the equipment of vessels or the enlistment of troops within neutral territories, he must require the sovereign to observe the law of nations; it is for the sovereign to maintain the neutrality and honour of the state.

1439. But beyond the limits of the presidial line, unless the neutral sovereign undertake and efficiently perform the office of restraining his subjects from carrying contraband, or attempting the breach of blockade, the belligerent is entitled to employ his own powers of repression, and to assert his belligerent rights.

1440. PRIVATE ARMAMENTS.—As soon as a private ship, armed and manned, has left the national waters of a neutral state, to aid and take part in the war with one of the belligerents, under his commission or without, whether manned entirely or partially with subjects of the neutral country, the adverse belligerent may attack, take, or destroy her as a foe; and in some cases, without affront to the neutral, execute the crew as pirates. Such is their character; but the horror of unnecessary bloodshed, and the fear of retaliation, causes them in general to be treated as prisoners of war.

1441. MERCENARIES.—As soon as war breaks out between two wealthy nations, swarms of adventurers of every description are ready to leave the neutral shores to participate in plunder and pay. The armies of both belligerents in general teem with fighting men of this stamp. Not unfrequently their best commanders and soldiers, both on land and at sea, are foreign mercenaries, whose trade, sentiment, and education are war, plunder, and pay, with occasionally a spice of romance, or a real or pretended sympathy in the cause in which they are engaged.

When such adventurers set forth to sell their swords and

services, they may be intercepted and treated as contraband of war, and, peradventure, hired into the captor's hosts. When they set forth already commissioned and enlisted, they are leniently dealt with as prisoners of war, and not unfrequently tempted to earn their guerdon in the captor's cause; at least they are free, as Sir Dugald Dalgetty, to do so, when the term of their original service has expired.

The subjects of a neutral state carry contraband and violate blockades at their peril; they are not under a duty to abstain from the one or to respect the other.

#### SECTION 4. CONTRABAND.

1442. Although a ship which sails forth armed and manned for the service of the enemy is an enemy's ship, the neutral subjects are not by reason of war to be disturbed in their trades and vocations. Except so far as they are restrained by municipal laws, shipbuilders may build vessels of every description, without stint in quality or number; they may build line-of-battle ships by the dozen, iron-clads, and steamers, for whoever will buy them. They may equip them in readiness for battle, in the perfection of machinery and the panoply of war. The builder is exemplarily impartial. If one belligerent grudge the acquisition to the other, he has only to offer a higher price and he will surely obtain the menacing frigate, or, if she be already sold, a similar or a better vessel. War-ships may be in progress of building for the hostile belligerents in the same yard. The enemies may supply themselves with artillery and rifles from the same assortment and stock.

1443. After the ship is built, we may inquire into her character and pursuits. She may have been purchased by a neutral; if so, the neutral may put his war-crew on board her, and she may sail to her destined port. She may have been purchased by or for or given to a belligerent; if so, she is the belligerent's vessel, and as such, as soon as she has left the neutral waters, whatever her destination, the adversary may in-

tercept, capture, and condemn her, if he can. She may be unsold, the property of the builder, or she may have been purchased by neutrals on speculation, to be offered for sale in another market. As soon as she has left the protected region, her character depends on her destination ;—if that be to a neutral port, however near the coasts of a belligerent, to be sold there, although the agents of one belligerent only are waiting to bid for her, she constitutes the unassailable, the unquestionable, even, according to the strictest notions of belligerent rights, the innocent goods and chattels of the owner. If the adverse belligerent want her, unless he can bargain for her on the sea, he must go to the market and offer a tempting price. But when her destination is to the belligerent, there arises a conflict between the neutral and belligerent rights; the neutral is entitled to sell his vessel, and to send her where he thinks it most to his advantage, for sale; but the belligerent, on the natural right of defence, is entitled to intercept the weapons with which he will otherwise be assailed. The right of self-defence against destruction is a higher right than that of the trader to sell his ship, and when two rights come in conflict, that which is paramount must prevail. The war-ship destined to a belligerent port for sale is subject to this right; she is contraband of war.

1444. But this, which is the foundation and, with its incidents, the limit of the rights of war in respect of contraband, does not affect the trader with guilt; although the expression guilty is a convenient mode of distinction in speaking of capture and search.

1445. Nor is the sending of an armed ship fully equipped, even to a belligerent port, for sale, an offence against either the American (*Santissima Trinidad*) or English municipal law. It is merely an impartial commercial speculation, of which, as in many other adventures, the speculator runs the risk. He does not trouble himself with any intention or order, that she should be employed in the service of any

nation or person against any other; his intention is to sell her to the best customer, be he one of his own or any other neutral nation, or of either of the parties to the war; after the purchase is completed, it is indifferent to him whether she founder or not. Undoubtedly, when he sends her to a belligerent port, he hopes to sell her there; but he may be disappointed of his customer, or if she is sold, his intention is accomplished as soon as he has received the price.

1446. The ship which has been sold to a belligerent, whether armed or unarmed, is then to be considered by the adversary, whatever her destination, an enemy's ship. The ship of war sent by the neutral owner to an enemy's port for sale is simply contraband of war.

1447. We have now to consider what contraband is, using that expression for contraband of war.

1448. We have already spoken of the armed ship, which is the perfection of contraband, as it contains all essentials of an armament, with one great exception, the military commander and his crew.

1449. As the shipbuilder is at liberty to pursue his vocation to so formidable an extent, it is obvious that the founders, the powder manufacturers, and all the artisans of the machinery and implements of war, may pursue their craft, and that they will pursue it vigorously, when their productions are most in request. As the ships may be built in the neutral dockyards, so the mortars, the cannon, the rockets, the shell, the rifles, the bayonets and the swords, the gunpowder, and all the other materials of destruction, may occupy the quays and fill the warehouses of the neutral ports. The neutral sovereign may behold all these menacing materials on his wharves, and loading on board his merchant ships. He is not bound to interfere with their export; he is not bound to inquire as to their destination. Though he may deem it proper for his own safety, he is not bound to refuse the clearance for belligerent ports. The cruisers of the belligerents are on the sea; he has not protected this

branch of the national commerce; the merchant and the belligerents must settle the conflict between their rights.

1450. But the neutral sovereign has not abandoned the commercial rights of his people to the despotism of those occupied in the war; his ships sail, though not attended by convoy, under the protection of his flag. It is only in respect of contraband of war that they may be searched and arrested, or on their way to break a blockade. Nor may they, on suspicion of bearing contraband, or of being bound to a blockaded port, be insulted or improperly treated or delayed.

1451. We have, then, to ascertain what is contraband. This depends upon its quality and its destination or ownership. To possess the character of contraband, it must possess two of those characteristics. It must be of the quality of contraband, and the property of the enemy of him who would capture it; or otherwise, it must be of the quality of contraband, and destined to such enemy.

1452. In some countries, as in Prussia and Austria, the municipal law has prohibited the carriage of contraband by the subjects; of course, contraband according to the acceptance in the country to which the law applies.

1453. It is not unusual, on the outbreak of a war, for the neutral nations not only to warn their subjects of the danger of their enterprises in the carrying of contraband, but also to prohibit the export of specific articles to either of the belligerents. Such practice, when adopted, is as a matter of national policy, and not on account of any obligation imposed by the public law.

1454. The belligerent nations also, on the breaking out of war, generally proclaim their views on the subject by ukases, edicts, decrees, or orders of council, in which, in effect, they sometimes command all nations to abstain from conveying to the ports of the enemy any of the articles which they designate contraband; and as surely as they proclaim the iniquity of selling it to the enemy, they purchase it themselves.



1455. Nothing is contraband unless it is property of a belligerent, or destined to a belligerent; we do not say to a belligerent port.

1456. If it be the property of a belligerent, or destined to a belligerent, his adversary may take it, although on board a neutral ship.

1457. We will first inquire as to its quality. Practice affords no guide, even if practice could create the law. If all things which have been treated as contraband were of that character, during war all commerce between neutrals and belligerents must cease.

1458. There are advocates of belligerent rights who assert that the belligerent may intercept every commodity, the deprivation of which would distress the foe, utterly regardless of the rights of neutrals, and as thoughtless of the mischiefs which it may bring upon him who asserts the right.

1459. The neutrals have a right to say, and to maintain the assertion by menace, and if necessary by convoy, by confederacy and proclamation of war, that nothing is or shall be treated as contraband except that which directly assists the belligerent in the conduct of war.

1460. It has often been determined between nations in their treaties what alone shall be considered as contraband, or what shall be excluded from that character. Whatever either party involved in a war is, under treaty, bound to permit, or, in fact, does permit, his adversary to import from one neutral, or from his own ports, he cannot treat as contraband when imported by others; inasmuch as he permits his antagonist to be supplied with such articles, he cannot assert that their exclusion is necessary for his self-defence, or complain of any nation which affords the supply. He cannot confer a monopoly on one of his friends. But two allies in a war are not bound to admit the importation into the country of their adversary of articles really of the quality of contraband, merely because they are not treated by them as such in a treaty to which they are the only parties.

Where the article is equivocal, the treaty may be reasonably cited against them as expressing their opinion at a happier time. Franciska. Atlanta.

1461. The essential quality of contraband is that it will directly aid the enemy in the conduct of war.

1462. Despatches from the enemy to his officers or others engaged in his service, and between such persons themselves, may obviously constitute most valuable assistance in the war. Such despatches are contraband, and those who carry them knowingly are guilty of violating the belligerent right. Except that the neutral nation is not only entitled to a free intercourse between herself and her own ministers in the belligerent country, but also to protect the correspondence between each belligerent and his ministers resident at her court. Caroline.

1463. The search and detention in respect of despatches is, however, confined to private ships. Public packets convey, in conformity with their duty, such documents as are, according to the general regulations to which they are subject, committed to their charge. The officers and crew of such packets have to govern and navigate the ship, they have no authority to violate the confidence of the documents entrusted in due course to their care; they consequently are not responsible, nor is their ship responsible, for the contents of the letters and despatches which she may convey. Nor can she be taken by a belligerent for examination before any court; nor can any officer of the belligerent break open and examine the correspondence on board. So any other ship which is bound to receive and convey letters is in effect to that extent a packet, and entitled to the same immunity. But the master or any person on board any such ship, knowingly, in excess of his duty, conveying despatches or military correspondence to the enemy, cannot claim the privileges to which he is entitled while acting within the rules which he is bound to obey.

1464. Cannon, mortars, all firearms, gunpowder, shells,

rockets, balls of every description, pikes, lances, swords ; in fine, all weapons of war ; saltpetre and sulphur, the ingredients of gunpowder, even defensive armour, as cuirasses, military clothing, military saddles and bridles, all military equipments are obviously munitions of war, and contraband, except such as are necessary for the proper purposes of the merchant ship.

1465. Imperfect implements of war, and parts of such implements which may be perfected or put together, are contraband equally with those which are entire. So are materials peculiarly adapted to the construction of ships of war and military machinery, such as the engines and other portions of steam-vessels, and materials prepared or peculiarly adapted to the constructing or equipping ships of war.

1466. It would perhaps be more easy to enumerate the articles which have not, than those which have, by prize courts been treated as contraband on account of their fitness for military purposes. We mention some of them, for however improperly they have been so treated, a prize court may so treat them again. They are sail-cloth, masts, anchors, tar and pitch, unless perhaps exempted as being the products of the country exporting them,—an exception inconsistent with a principle to which we have already referred, (1460) ; materials which serve directly for the building and equipment of vessels, except, perhaps, fir-planks and unwrought iron. It has been said by the merciless advocates of war that provisions are contraband, if it may be reasonably hoped that their exclusion will produce famine, that the hostile nation may be starved ! France did not hold naval materials contraband.

1467. In the interrogatories issued by the British government for the examination of the officers and others on board of captured vessels, in the outbreak of the last Russian war, the articles enumerated as contraband were—guns, mortars, howitzers, balls, shells, rockets, hand-grenades, rifles, muskets, carbines, pistols, fuzees, halberts, spontoons, swords,

bayonets, locks for muskets, flints, ramrods, belts, cartridges, cartridge-boxes, pouches, gunpowder, percussion-caps, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing or accoutrements, or any sort of warlike or naval stores, steam-engines and machinery, and any parts thereof. Except that the word machinery is too indefinite, the list appears to contain only articles which may reasonably be regarded as contraband of war.

1468. Military officers, soldiers, and sailors are obviously of the character of contraband ; and their number is immaterial to the detention of the ship in which they sail. Atlanta.

1469. Articles not ordinarily contraband may be such on account of their special purpose. Provisions, clothing, boots, shoes, etc., destined for the special supply of an armament then being fitted out, undoubtedly afford direct assistance in the war, and may be regarded as possessing the character of contraband, particularly if consigned to the belligerent government. But this character depends on proof of the special purpose, the mere fact of the destination of such articles to a port in or near which there is a military arsenal, or where a military expedition is in preparation, will not confer that character upon them. Jonge Margaretha. Charlotte.

1470. Civil officers and subjects of the enemy are not of the quality of contraband,—of course, private neutral persons going to the enemy's country are not so ; nor are foreign officers and soldiers of a neutral country, unless going to join the enemy's military force.

1471. Whatever their quality may be, unless the articles are his property, their destination must be to the enemy to constitute them contraband of war. If consigned to a port or any part of the enemy's country, there is no doubt of the destination. If sent to a hostile armament on the open sea, or in the port of some impotent nation calling itself neutral, or on a coast which has no means of resist-

ance, the destination is to the enemy. If consigned to some entrepôt, or place in a country which cannot oppose it, to the agents of the enemy, there waiting to receive it, the destination is hostile.


1472. The real destination (which includes consignment) is the question, and not merely that on the papers; but that on the papers must be accepted, unless there is good ground for believing it to be fictitious; and it matters not how near the port of real destination may be to the hostile country, or how likely the articles may be to proceed thence on a hostile destination: during their transit to a neutral port they cannot be interfered with as contraband of war. He who suspects must endeavour to intercept them after they have begun their hostile progress. As the allies on each side of the warfare constitute one common belligerent, the allies on each side are common enemies to the allies on the other, and if munitions of war are destined to any of the allies on the one side, they are contraband as to each of the allies on the other.

1473. A destination from either a neutral port to the belligerents, or from one port to another of the belligerent or his allies, is of course hostile.

1474. The ship is on her lawful business in carrying her contraband cargo; she is guilty of no offence against her own laws or the belligerent; she is proceeding to the best market to sell her wares. The belligerent has, on the ground of self-defence, the right to intercept her, to take her into his port, and to deprive her of the dangerous cargo. In another page we shall see how ruthlessly he treats her. But his right is to intercept her in what he calls her criminal voyage; that voyage ended, she cannot be impeached for her supposed offence; she is entitled to sail to her next destination unsuspected and unassailed.

#### SECTION 5. PRE-EMPTION AND ANGARIE.

1475. Pre-emption is alleged to be a belligerent right to



appropriate at a price the cargo of a neutral destined to the enemy's port, either when that cargo is of doubtful character, or when the captor wants it for himself or his nation.

1476. It cannot be regarded as a right, but it may be conveniently accepted upon proper terms as a compromise, when the cargo is such as to be likely to prove useful to the enemy for the purposes of war. The terms are sometimes settled by treaty fixing the profit which the captor shall allow, such as ten or more per cent., after allowance for freight, and consideration of all other circumstances. When the terms are not fixed, regard should be had to the probable profit which would have been made in the market of its destination, with sometimes perhaps, in case of justifiable suspicion, some allowance for the danger it has escaped.

1477. The Act 17 Vict. c. 18 (sec. 8), authorizes the Lords of the Admiralty, their officers and agents, without proceeding to condemnation, to purchase for the public service, and directs the customs officers to permit the entry and landing of, naval and victualling stores laden on board the vessels of foreign nations, and intended to be carried to the ports and countries at war with the Queen, whereby the enemy might be supplied with the material to build, fit out, and provision ships of war, in case such vessels should be taken and brought into the ports of Great Britain.

1478. But as to the right of the belligerent to take the neutral's cargo, because he or his nation wants it, because it is necessary for his military forces, because there is a famine in the land; it is the right of the robber, the pirate, the buccaneer; the right of superior force to satisfy its necessities by any atrocious crime. If he lay his hand on the innocent cargo, let him pay the enhanced price of goods purchased to satisfy such necessities, or that of the market for which they were destined, if they would have sold there at a still higher price.

1479. **ANGARIE** also is miscalled a belligerent right. It

is the forcible employment of neutral, as well as national, private vessels for purposes of war, as in the conveyance of troops, ammunition, or stores. The right so to employ the national ships may be justified by municipal law; but all the arguments as to its legality, or its legality under pressing necessity, with full compensation to the owner, establish only the right of the robber, who violates the law with a strong, and more or less liberal, hand.

1480. It can hardly be too often repeated that a nation can neither acquire to itself, nor confer on its adversary, any right against neutrals by making war.

#### SECTION 6. INNOCENT COMMERCE.

1481. In strictness, all commerce between a neutral and a belligerent is innocent, for they are friends, and have a right to traffic with each other; but the word innocent has been used, and for want of a better may be retained, to describe that commerce which, except on the ground of blockade, the adverse belligerent has no right to interrupt. The word guilty is also used, not as indicating guilt in the merchant, but for want also of a better mode of description, to denote contraband; that which, irrespective of blockade, the adverse belligerent has a right to interrupt.

1482. In treating of innocent commerce, we are therefore, although this division of the subject is convenient, continuing the consideration of contraband, for all that is not contraband is innocent. There are subjects of commerce which have been treated as unlawful, although not classed under the definition of contraband of war. It may be convenient to class those subjects under another head, and to call it prohibited commerce, that which has been condemned irrespective of the rightfulness of the condemnation.

1483. It has been asserted that the neutral was not entitled to acquire and carry on—1st, a traffic which the belligerent was obliged wholly or partially to abstain from car-

rying in his own ships, especially if that traffic had been interdicted to others previously to the war; we may call this acquired commerce: 2ndly, the coasting trade between the belligerent's ports; we may call this belligerent's coasting trade: 3rdly, the trade between the belligerent's home-ports and his colonies, or between his colonial ports: we may call this his colonial trade. The principles affecting the coasting and colonial trade are the same, they may therefore be considered together.

1484. It has been asserted—1st, that a neutral was not entitled to carry in his ships cargo belonging to the enemy; 2ndly, that a neutral was not entitled to avail himself of the enemy's ships for the conveyance of his own goods.

1485. All these propositions have been more or less the subjects of controversy and dispute; they may be treated under the following heads, that is to say:—1. Acquired commerce. 2. Enemy's coasting and colonial trade. 3. Enemy's goods in neutral ship. 4. Neutral goods in enemy's ship.

1486. **ACQUIRED COMMERCE.**—It has been held that a neutral is not entitled to embark in a trade with the colonies of the adverse belligerent which could no longer be carried on by that belligerent, by reason of the difficulties in which he was involved in the war, particularly where such trade had been interdicted before the war (*Princessa*); as where a nation had prohibited all traffic, except by its own subjects, with one of its colonies. Such a decision is not likely again to occur. It is impossible to find any justification for the doctrine. Not only is such trade but a slender compensation to the neutral for the inconveniences occasioned to him by the war, and an accident like those which interfere with him in other respects, but it has no relation to the principle which forbids the neutral to render the belligerent military aid. It is carried on, so far as the neutral is concerned, exclusively for his own benefit; and as to the adverse belligerent, his subjects merely buy and sell innocent



commodities, which perhaps they could not otherwise acquire or dispose of, but from which they derive no military assistance. If the greater or less need of such commodities, or the greater or less distress or inconvenience occasioned by the want of them for civil purposes, warrant the adversary in capturing the neutral trader, he is warranted in the prohibition of all trade. A belligerent acquires no right to mete out or measure the limits or development of the commerce of his neutral friend; it is affected, in many respects prejudicially, in a few beneficially, by the presence of war.

1487. COASTING AND COLONIAL TRADE.—It has been held that the ships of a neutral are not entitled to carry the traffic which would or might otherwise have been conveyed by the enemy's ships from one of his ports to another, especially if such traffic had been previously engrossed and conducted in, or restricted to, the belligerent's own vessels. Immanuel.

1488. This in some respects differs from the condition of acquired trade. In some cases the neutral ships may convey cargoes wholly or partly purchased by neutral merchants; in other cases they may convey cargoes wholly or partially the property of enemies. While the rule that enemy's goods in neutral vessels were liable to condemnation prevailed among some nations, the question was seriously affected by the distinction.

1489. The argument against the acquisition of new traffic by the neutral was of course applied to this subject. In addition, it was said that the neutral mixed himself up, and became associated with, the belligerent. This argument is certainly of no value, for the neutral is a friend of each belligerent, and his subjects have a right, in all peaceable occupations, to mix as much as they please with the subjects and peaceful affairs of either. It was said that it greatly aided the enemy by facilitating the communication and dealings between his ports. To this we reply that the

neutral is not to be interdicted from his commerce, or the employment of his shipping, merely because either belligerent derives social advantage from dealing with him, or because the adversary deems that advantage excessive. It is further said that by affording this advantage to a belligerent, that belligerent is enabled to employ, for hostile purposes, ships of war, with which he must otherwise convoy and protect his traders; and that the belligerent is moreover thereby empowered to employ the crews of the vessels, previously occupied in such commerce, on board his men-of-war. It may be true that no ships of war are occupied in convoying such traders, and that the crews of some, or many of the traders, may have been drafted into the ships of war; but all that proves is, that the enemy has relinquished wholly or partially the trade which has been assumed by the neutral, not that he would otherwise have carried it on, not that the crews would have remained on board the traders, not that the ships of war would have been employed as convoys. The neutral is not responsible for the contingent advantages which a belligerent friend of his may derive from the peaceful assistance he affords him; and the adverse belligerent, also his friend, has no right to interfere with such assistance. Should a neutral sovereign undertake any specific commerce for a belligerent, for the purpose of releasing and enabling him to employ his military forces more efficiently against the adverse belligerent, he would be guilty of a breach of neutrality; but the accidental occupations of one merchant or shipowner, or of many, must be considered with regard to their immediate purposes and direct results, and not with regard to conjectural, possible, or even probable consequences.

1490. NEUTRAL GOODS IN ENEMY'S SHIP.—Some prize-courts held that the cargo of a neutral on board the ship of the enemy was liable to confiscation. It is difficult to ascertain upon what principle. Reduced to its simple condition, it is that the military officer of one Power has

found the property of another, with which it is on friendly terms, on board a certain ship; unless the character of that ship alter the question, it is simply piracy to take it. That ship however belongs to an enemy, therefore the officer has a right to take the ship. The owner of the goods has exposed himself to the danger of his goods being destroyed or damaged in conflict, and to the inconvenience arising from the necessity of separating the goods from the vessel; and as a belligerent can only send his prize to his own country, or temporarily to some convenient friendly port, and as the distinction between the characters of the ship and the cargo are not apparent, that inconvenience may be considerable, and attended with great expense and delay. This inevitable inconvenience the owner, who has so embarked his commodities, must endure. But the neutral and the enemy of the captor were friends of each other, and the same right of chartering or employing the vessel as between them, continued to exist, as if all the world had continued in peace; the goods were lawfully, though subject to inconveniences, on board of the vessel; they were therefore the goods of a friend of the captive in a proper place. The English prize-court did not proceed so far, on the absurd principle that mixing with the enemy warranted confiscation, as to condemn the neutral cargo, but it manifested great reluctance in recognizing the neutral ownership in commodities so embarked.

1491. The declaration of Paris runs thus:—"Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag."

1492. The neutral is still subject to the danger and inconveniences to which we have referred, and must make out his title in the prize court; but, subject to these hazards, he may embark his cargo in a belligerent vessel.

1493. If the captor can distinguish the cargo, and can, consistently with his duties, convey it conveniently to its destination, it is proper that he should do so, and thereby

earn for himself the freight which the enemy would have received had he not been intercepted.

1494. **ENEMY'S GOODS IN NEUTRAL SHIP.**—The English and others asserted a right to confiscate the goods of an enemy in a neutral ship. There was some plausibility in their argument; indeed, it is the most rational of those of the asserters of extravagant, miscalled by some extreme, belligerent rights. They assert that the belligerent has a right to take the property of the enemy. The neutral denies at least the universality of the proposition, and adds, you have no right for such purpose to invade the dominions or injure the commerce of your friend; you have no right to arrest and divert your friend's ship from her voyage because there is on board her that, as to which you assert a right of appropriation, but, which she was entitled to carry. She is entitled to traffic with that enemy of yours, and you have no right to molest such traffic; she is entitled to retain and carry to its destination, according to her contract, the cargo she has taken on board, without your interference; you have no right on board her, except to see that she bears nothing to the enemy which can be made use of against you as an engine or munition of war.

1495. The declaration of Paris is, "The neutral flag covers enemy's goods, with the exception of contraband of war."

1496. This relieves the neutral vessel from all question as to her innocent cargo; but the prize court demands very strict proof of the neutrality of every vessel which the captor has thought proper to suspect and examine.

1497. They who maintained a belligerent right to take the cargo of an enemy on board a neutral vessel, on the ground that the belligerent had a right to take his enemy's property, asserted as a consequence a belligerent right to take the persons of his enemies found on board; for, according to them, it is the first principle of war that a belligerent had a right to take his enemy's person.

1498. This notion was unsustainable, for the same reasons

that the claim to take the enemy's cargo could not be sustained, and is denounced in effect by that declaration of Paris to which we have last referred. Had it been sustainable the Trent was liable to arrest, and the Confederate emissaries on board her were properly prisoners of war. The unfortunate precedents of England induced her to rely on a technicality, instead of protesting against an outrageous insult to her sovereignty, and a glaring violation of neutral rights.

1499. All neutral commerce is innocent, except in contraband of war.

#### SECTION 7. BLOCKADE.

1500. The neutral is entitled to carry on with each belligerent without interruption all commerce, except in contraband of war; and is entitled to enter every port of each belligerent, who will admit him, without the interference of the adversary.

1501. This right, like the dealing in contraband, is subject only to one restriction, its conflict with the belligerent's right of self-defence. The right of self-defence does not rest in mere resistance, it extends to the disabling of the antagonist, even by destruction, and, among nations, to the subduing of all the forces and fortresses of the foe. While the belligerent's army is employed in besieging a city, he is entitled to prohibit all access by land; while his fleet is employed in reducing a port, he is entitled to prohibit all access by the water; while besieging the port by land, and blockading it by sea, he is entitled to prohibit access in either direction: but these are the limits of his belligerent rights. He has no right to prohibit the entrance of neutral commerce into any port which he is not endeavouring to master by a sea-siege. A lawful blockade is not for the purpose of shutting out commerce, but of capturing the town; when directed to its legitimate object, it may incidentally exclude every ship, from the pleasure-boat and fishing

craft to the neutral man-of-war. The exclusion of shipping and their cargoes is the incident, and not the lawful purpose of blockade. As well might he cover the sea with his cruisers, or stop all the narrow inlets of trade. He cannot challenge the innocent cargo on the ocean, he cannot seize it in the strait; can he entitle himself to seize it by gathering his cruisers in the offing, and proclaiming a blockade? They are still only cruisers; they are not engaged in the military operation of a siege; they are entitled only to intercept, in that as in any other station, contraband of war. Before a blockade is effective to exclude commerce, we must inquire whether it is directed against, and effective to endanger, the port. See Westlake. And see Macqueen.

1502. The evil example set by the English Orders in Council, and the Berlin and Milan decrees of Napoleon (1805-1807), and the extravagant pretensions of belligerents asserted in the war of desperation during which they were issued (Spes and Irene), have left erroneous impressions as to the legitimate objects and purposes of blockade. The blockade of the Confederate ports, to which the European Powers, bound, as they imagine, by their own bad precedents, have so ignominiously submitted, was founded not on the siege of the forts or fortresses, but on the incapacity of the Washington Government to collect the customs there.

1503. It is at least established by the declaration of Paris that "blockades, in order to be binding, must be effective."

1504. Assuming that this does not require that the blockade be efficient to endanger the place, it must nevertheless be constantly efficient to exclude ingress and egress of ships. It cannot be constituted except by the continued presence of a naval force, sufficient to prevent communication without evident danger of capture. (Frederick Molke. Arthur.) It is a matter of fact (Betsy); unless it exist in sufficient vigour, it is not instituted by proclamation.

1505. The first requisite is that the force should be suf-

ficient. This does not imply sufficiency to capture in hostile encounter any number of ships which might attempt to break the blockade, far less sufficiency to repel a relieving force of the beleaguered belligerent or his allies ; but it must be a military force capable of reducing ordinary armed merchant vessels to submission.

1506. When a blockade has been recognized by his government the neutral must regard it as sufficient, so long as it is maintained by a force equal, or nearly equal, to that by which it was instituted.

1507. The blockading force must be sufficient of itself, its adequacy must not depend upon the occasional presence of ancillary vessels ; but it is not essential that it should at all times consist of the same ships.

1508. Its sufficiency involves its being so near, and so disposed, as to exclude from access except by accident or stealth. Its disposition has been spoken of as an arc about the entrance of the port, but that is quite immaterial ; it must be stationed or hovering so near, and so disposed, as to make the danger of entering the blockaded place manifest.

1509. Cruisers on the coast, or shallows lying in ambush, do not constitute a blockade.

1510. In one case, the prize court declared the opinion of the Admiral to be of "great, perhaps predominating, weight," on the question of sufficiency of the blockading force. (Francisca.) On a subsequent occasion it seemed to hesitate, as well it might, in this estimate of evidence.

1511. Accidental absence of a blockading force, as during a storm, is not a discontinuance of a blockade ; but it ceases unless the squadron return as soon as the storm has subsided.

1512. We have asserted that the proper criterion of the efficiency of a blockade is danger to the place invested ; were that rule admitted, a somewhat more accurate notion might be formed as to the force requisite, and the position it should occupy, to constitute a lawful blockade ; unless dan-

ger to the place be an essential, it is difficult to find any measure for either the force or the vicinity of its station. As the neutral must not resist, an armed boat is sufficient to capture her; as she must not approach the blockaded harbour, how is she to discover the occasional relaxation of the siege?

1513. CESSATION.—The blockade ceases on the withdrawal of the whole, or so many of the blockading vessels as to render it inefficient. This proposition does not include the accidental absence to which we have already referred.

1514. It ceases if the blockading force is beaten off by its enemy, or if so many of the blockading squadron have disappeared, though in pursuit of the enemy, or in chasing vessels which have attempted to break it so far, as to remove for a reasonable time the manifestation of danger.

1515. But it does not cease merely on the appearance of the enemy (Neptune), or during a conflict with the enemy's forces, within such a distance as not to remove the manifestation of danger. The conflict is an endeavour to maintain it, and the neutral must await the result. Nor does it cease because the force is diminished by the chasing of ships, which have endeavoured to break it, within a reasonable distance from the harbour; nor by such an absence as merely affords a lurking or hovering vessel the opportunity of slipping by the squadron.

1516. MODIFIED.—As a general proposition, the blockade must be for the exclusion of all vessels. It cannot show partiality or favour either to ships of a particular nation, or to particular vessels: if it admit any vessels, it must admit all; if it permit egress to any, all have the like right of egress. It cannot permit the ships of the enemy to go in or out, and refuse such permission to a neutral. It cannot even under treaty permit the ships of one neutral nation to pass, and prohibit those of another. It is no blockade. A treaty conferring that right is inconsistent with the law of blockade. *Francisca.*



1517. When the belligerent grants to the ships of the other the right of ingress and egress from certain parts or all parts up to a certain day, no blockade upon such parts against neutrals can be instituted before that day. *Francisca*.

1518. This proposition has its exceptions. First, the blockading squadron is bound to permit the exit or entrance of such vessels as have a right to go out or enter. That right will be considered. Secondly, under circumstances a blockade may be established with some modifications. If such blockade is attempted to be established, its terms must be notified to all neutrals (*Francisca*); for a neutral knowing or seeing that ships openly go out or enter without interruption is guiltless in doing the same, until apprised of the terms on which such conduct is permitted.

1519. The occasional clandestine passage of vessels in fog or by superior skill, contrary to the intention of the blockading force, does not affect the validity of the blockade. *Francisca*.

1520. VIOLATION OF BLOCKADE is the attempt of an unprivileged ship, with notice of blockade, to enter or leave the blockaded port, being captured in the offence, that is, during the continuance of the blockade, and before her voyage is finished.

1521. The offence then comprises these four elements:—1. Want of privilege. 2. Notice. 3. Attempt to break the blockade. 4. Capture in the offence. We shall defer the consideration of the fourth till we speak of capture.

1522. The penalty is confiscation of the ship, and so much of the cargo as belongs to the shipowner, or is otherwise involved in the offence. *Frederick*.

1523. PRIVILEGE.—A ship which entered the port before the institution of the blockade, in fact and by notice, is privileged to sail out after notice, (she ought to have a note indormed on one of her principal papers,)—if she is in ballast (*Francisca*),—or if she is exclusively employed by

a neutral minister in conveying home distressed mariners belonging to his country,—or with the cargo which was in her or in course of delivery from lighters, etc., when the blockade was instituted. (Judith.) But the English prize court assumes that she was loaded after the institution of the blockade, and puts the claimant to prove the contrary. Frederick.

1524. She is privileged to come out with a cargo sent into the port before the blockade, by the owner or a neutral from whom he purchased it, whether by her or by a different vessel. (Jeanne. Juffrow Potsdam.) And the cargo is privileged, although the ship for other reasons may be guilty of breach of the blockade. So is the cargo purchased for its owners, by their agents after notice of the blockade, upon instructions given before such notice, if the owners had not time and opportunity to countermand the instructions. (Jeanne. Neptunus. Adelaide.) So is the cargo of an owner ignorant of the blockade, attempted to be exported or imported, in breach of the blockade, by a master who is not his agent. Jeanne.

1525. But a vessel may not enter a blockaded port, though in ballast, to bring out a cargo, though purchased before the blockade was established; nor may she enter with a cargo, although she had brought it out and not unloaded it.

1526. **DECLARATION.**—Although a number of ships may beset an enemy's harbour, it is not a blockade until it is declared that they are there for that purpose.

1527. Such declaration "is a high act of sovereignty," and can be made only by the government or under its authority. That authority may be assumed to have been reposed in the commander of an expedition in a remote station; but not in the commander of an expedition within reasonable access of his government, unless it is indicated by the nature of the expedition.

1528. **NOTIFICATION.**—The blockade of a port ought to be notified, by the representative of the belligerent who

has instituted it, to every neutral government. But this notification is not essential to the validity of an actual blockade. Francisca.

1529. Notification does not constitute a blockade in the absence of its effective existence.

1530. If the notification is that all the ports on a particular coast, or several ports by name, are blockaded, and any one of them is not under blockade at the time specified for its commencement, the notification is void as to all.

1531. The belligerent ought to notify the cessation of a blockade, in the same manner as he notifies its institution. But it may reasonably be presumed that such information will arrive more tardily than that of declaration, particularly if it is raised by an adverse force.

1532. If a blockade is resumed after it has been discontinued, the belligerent ought to give a fresh notification, as in the case of an original blockade. Hofferung.

1533. NOTICE.—Knowledge of the existence of a blockade is a legal inference from due notice either actually given to the master of the ship, or so given as to warrant the presumption that he had received it.

1534. The essentials of the notice are—(1) that it should be accurate; (2) that it should emanate from a sufficiently authentic source; (3) that it should have been sufficiently communicated.

1535. With these qualities it may be either—(1) particular to the master, or (2) by public proclamation or advertisement, or (3) by general information.

1536. The mariner has a right to assume that every port of every nation, with which that whose banner he bears is at peace, is open for his admission, until he has in some manner received a reasonably authentic notice that it is closed against him by the sovereign of the nation in which it is situated, or by the declaration of a hostile sovereign by whom it is blockaded, or by the command of the ruler of his own country.

1537. **ACCURACY.**—If the notice, whether by notification, proclamation, general information or report, or private communication, is substantially inaccurate, it is simply null and void; if it state that all the ports on a line of coast are blockaded, and any one of them is free from blockade, the notice is a nullity. (Francisca.) If it state that several ports named are blockaded, and the force at any one of them is insufficient to effectually blockade it, the notice is null; and until he has received a better notice, the mariner is justified in attempting to enter any one of those ports, although it may swarm with ships of war. But if one of them give him true notice that such port is under blockade, he must change his course and discontinue the attempt to enter.

1538. But an erroneous statement by an inferior officer to the master of one ship does not warrant the attempt by other ships to enter (Francisca), unless they have been led to do so by the communication to them of such notice.

1539. **AUTHORITY.**—We have mentioned that a blockade requires for its validity the authority of the belligerent government. It must also be communicated, whether publicly or specially, to the individual in a manner which entitles it to credit, although no special formality is necessary in making the communication. Francisca.

1540. Credit must be given to the notice of the commander of a belligerent ship of war. He should indorse it on some principal paper of the merchant ship. Francisca.

1541. **SUFFICIENTLY COMMUNICATED.**—It may be sufficiently communicated either—(1) by particular notice to the master; (2) by public proclamation or advertisement; or (3) by such general information as must be presumed to have reached him.

1542. The sufficiency of communication involves a question of time as well as of the fact of information. The master of the ship is bound to act upon it as soon as it reaches him; and as he is agent for the shipowner, and, at least in the absence of a supercargo, for the interest which the ship-

owner has in the cargo, his act binds that owner. But, unless he is so constituted specially, he is not the agent of persons who have confided cargo to his charge on freight, although it is his duty to apprise them of such notice. The owners of such cargo are not affected with notice until after the lapse of sufficient time, and the occurrence of sufficient opportunity, to warrant the presumption that they have been informed of it.

1543. PARTICULAR NOTICE.—Notice given by a blockading ship, or any cruiser of the belligerent, of the existence of a blockade, constitutes sufficient notice to the master of the ship. *Mercurius*.

1544. A ship which has not been previously informed by public or private notice, must be informed of the blockade by the blockading squadron, and allowed to exercise her rights as existing at that moment. If she is entitled to proceed, she must be allowed to proceed; if she is not, she must be permitted to change her course and proceed to any unblockaded port. It is the duty of the officer giving such notice to state and sign it on one of the principal ship-papers, and to state precisely what notice he gave; for if erroneous, the mariner is entitled to the benefit of the error. It follows that a vessel, previously uninformed, approaching a guarded port, is entitled to inquire of the most convenient armed ship whether the port of her destination is under blockade, and then to act in accordance with her existing rights. *Betsy*. *Neptunus*. *Fitz-Simmons v. Newport*.

1545. It is the duty of belligerent captains, meeting merchantmen destined to a blockaded port, to inform them of the fact as a matter of courtesy, and to record it as already mentioned as a matter of duty.

1546. PUBLIC PROCLAMATION OR ADVERTISEMENT.—A blockade should be publicly advertised or proclaimed. A notice of this character is distinguished from public notoriety in the looser signification of the expression. An advertisement is a general notice which affects every ship in

the port in which it is advertised, from the shortest period after the advertisement which is consistent with a just presumption that it has come to the knowledge of the master.

1547. But if, simultaneously with the proclamation, information arrives that the blockading squadron has been driven off by the enemy, it does not constitute an effective notice. It however involves a duty on the part of the ship to inquire on each convenient opportunity in her voyage.

1548. It has been said in the prize court that a proclaimed blockade must be presumed to continue until it is by like authority declared to have ceased, at least, until there is a clear case of its determination by cessation of the fact. (*Neptunus*.) This is not quite accurate. If trustworthy information has been received in the port from which she sails, a ship is entitled to proceed, making reasonable inquiry, as in the case of such information arriving contemporaneously with the notice.

1549. GENERAL INFORMATION.—It has been said in the prize court that evidence of ignorance of a blockade, when matter of general notoriety, as it has been called, must be perfectly satisfactory to the court (*Union*),—a doctrine doubtless most agreeable to captors, but a reversal of all the rules of law and common sense. What is general notoriety? assume it more than mere rumour, assume it specific and extensively known, to establish guilt against a man otherwise pursuing a lawful avocation, the obligation rests upon the accuser to prove the person otherwise innocent to be guilty. The Privy Council rescued the law of this country from the ignominy of a such a doctrine. (*Franciska*.) It was held necessary to show that the master of the ship was in such a situation as to warrant the presumption that he was aware of it, and the notorious blockade was tried on its validity and found wanting.

1550. INQUIRY.—It has been said in the prize court that a ship is bound to inquire at the ports which lie in the way; that she is not entitled to approach the blockaded river or

estuary to inquire of the blockading squadron; that it is only under special circumstances that she is entitled to do so. Union.

1551. If this doctrine is confined to the ship after she has received notice of the blockade, or after it has become so well known as to raise a fair presumption that she has become informed of it, the proposition is accurate: but it seems to have been stated generally; if so, it is erroneous. The only presumption on which a ship at peace with all nations, and uninformed of blockade, is bound to proceed on her voyage is, that every port is open, on payment of usual dues, to receive her. The belligerent who closes a port by blockade is bound to discharge his duty by informing her of it before he interferes with her progress, or calls upon her to perform a duty which does not arise until he has given her due information. The prudent mariner will, however, avail himself in time of war of convenient opportunity of inquiry, especially from ships of the belligerent, as to the condition of the ports of his destination, especially if they have been blockaded. Whea. 577. Betsy. Neptuneus.

1552. The Privy Council of England has of late corrected some of the disgraceful doctrines of the prize court, and, among other such corrections, has declared in effect that if a mariner has, on sailing, no notice of an effectual blockade, although he had been in a situation in which it would be presumed that he had been informed of a blockade which was improperly proclaimed, he is not bound to speculate upon a blockade *de facto* being established.

1553. ATTEMPT TO BREAK THE BLOCKADE.—We have stated what ships are privileged to quit a blockaded port, and what notice is essential to constitute the attempt of others to enter or quit it a violation of the law of blockade.

1554. We have now to inquire what act, after such notice, is sufficient to constitute the offence. It must be the proceeding to enter the port, which we denominate ingress; or

the attempt to quit it, which we call egress, although neither of the words may be quite apposite.

1555. **INGRESS.**—There can be no breach of blockade, unless the true destination of the ship is to a blockaded port or place; that is, either her original sole place of destination, or one of her original places of destination, or a place at which she is to call without reference to its being blockaded, or a new destination adopted instead of, or in addition to, her original destination; or a deviation to enter it.

1556. Her destination to any port of a neutral, or to any open port of either belligerent, however near the beleaguered place, is no violation of the law of blockade.

1557. The true destination is often concealed, and a false one indicated by the papers. Papers indicating destination to the blockaded place are evidence against a vessel. All her papers are to be assumed to be honest, unless there is some just cause of suspicion, and it is incumbent on those who allege it to prove fabrication.

1558. Concealment of destination is indicative of an intention to proceed to an unlawful port; as with munitions of war, to proceed to the port of a belligerent;—in the neighbourhood of a blockaded port, of an intention to enter it.

1559. The offence of attempting ingress begins from the moment of sailing, whether on her original or altered destination, for the purpose of proceeding to the besieged port. But she may sail from a distant country to an open port near that which is blockaded, to await the discontinuance of the blockade. *Calypso. Jonge Petronella. Franciska.*

1560. She may not sail from a port so near that under blockade as to indicate an intention of entering it, unless news has arrived that the blockade has been raised or discontinued.

1561. She may not hover so near as to raise a fair presumption of her intention to enter. Searching for a pilot and other pretexts will not avail a vessel endeavouring to get under the protection of the land batteries of a blockaded harbour. *Neutralität.*



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1555. **LYNESS.**—There can be no breach of blockade, unless the true destination of the ship is to a blockaded port or place; that is, either her original sole place of destination, or one of her original places of destination, or a place at which she is to call without reference to its being blockaded, or a new destination adopted instead of, or in addition to, her original destination; or a deviation to enter it.

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1562. *EGRESS*.—Coming out with a cargo loaded after the notice of blockade, although she had entered in ballast, is breach of blockade. *Betsy. Francisca.*

1563. A blockading squadron ought to allow ships found in a blockaded port a reasonable time after notice to unload, and even to load and sail out. This is sometimes done. *Elize.*

1564. Coming out even in ballast, after having broken through the same blockade, has been held a breach of blockade. A vessel purchased from the enemy after notice of the blockade is guilty of a breach of it, although coming out in ballast. *Whea. 584.*

1565. A vessel licensed to enter a blockaded port is inferentially licensed to come out again with a new cargo.

1566. A ship which came out in ballast, but took on board, outside the blockaded harbour, a cargo from boats sent along the coast to meet her, was held guilty of breach of blockade. *Neutralität. Stert.*

1567. Blockade is a sea-siege, and consequently cannot be violated by ingress or egress by land or by inland waters. Therefore, notwithstanding a blockade, a merchant is entitled to import or export his goods, or to send his vessels by inland navigation, river, or canal, to or from a blockaded port, from or to one which is open, as freely as he may convey them by carriages or a caravan. *Comet.*

#### SECTION 8. VISITATION AND SEARCH.

A sail! a sail! a promised prize to hope  
Her nation—flag—how speaks the telescope?—*Corsair.*

1568. Visitation and search are to be performed by an officer who is interested in the extravagant exercise of his office, who is interested in being suspicious, and who has been generally indemnified by the prize court in even unwarranted suspicion.

1569. We have spoken of it in its limited character in connection with the national revenue, and as conceded, to

some extent, with reference to piracy and the slave-trade. As an international right, or rather as a concession of neutrals to belligerents, it is confined to contraband of war, the detection of attempts to interfere with blockade, and the ascertaining that the vessel is not an enemy.

1570. It is an act of sovereignty, and therefore can be exercised only by the officers of public ships of the state. Until lately, the neutral nations were insulted by the institution of search by the licensed plunderers called privateers. If the sovereign is so destitute of war-ships as to be under the necessity, as in times of yore, of summoning the merchant service to his assistance, and thus improvising a navy, let him at least convert them into public ships, and make their commanders, however ill-disciplined, responsible for their conduct to him, and thus, for the honour of his nation, towards foreign states.

1571. The execution of the office consists in ascertaining, by her flag and papers, to what nation a ship belongs, to what port she is really bound, and by these papers and examination of her cargo, so far as it is practicable on the open sea, whether she carries contraband of war.

1572. NOT OF PUBLIC SHIPS.—As the act is one to be exercised only by the armed ships representing the sovereignty of the state, so they cannot violate the sovereign rights of any other state by visiting or searching the ships which bear its commission. No government will permit its sovereignty to be insulted, or its ships of war to be suspected of piracy, of enmity, or rendering service to a hostile state. The neutral war-ships enjoy entire immunity from search, even within the national waters of the belligerents. If they offend, complaint of their conduct must be addressed to the sovereign of whose power they constitute a part. We have spoken of visitation and search as connected with convoy.

1573. PRIVATE VESSELS.—In time of war all private ships not under convoy are liable to the visitation and search of the ships of war of either belligerent.



1574. In time of peace, according to the law of nations, the armed ships of one nation have no right of visitation or search of the private ships of another, except when, and to the extent in which, it has been conceded by the nation to which the private ship belongs.

1575. PURPOSE.—The only purposes for which search is justified, as between a belligerent and a neutral, are to ascertain the character of a vessel, whether pirate, enemy or neutral, and to ascertain whether, if neutral, she is bound to a blockaded port or carries contraband of war.

Distinctions have been attempted between the right of visitation and search; but it is vain to attempt to define the limitation between them, for, except to the extent before mentioned, in the case of convoy, where visitation is admitted, the right of reasonable search must be admitted as a consequence. If the flag is false, the papers are probably false, and if so, the cargo may be expected to be contraband; the falsity of the flag and of the papers may be capable of detection only by a more or less rigorous examination of the cargo. But the admission of the right is conditional on its being exercised with care and moderation.

1576. England claimed a right of search for a purpose different from that of contraband; a right to search for deserters from her service, and to impress her own seamen found in neutral merchantmen. This claim was resisted by the United States, and is destitute of foundation. It was an attempt to pursue fugitives from its own into a friendly dominion, and to exercise a municipal authority within the province of another state. It was founded on the pretence of necessity; a pretence which, if a justification, would justify every crime. It is not probable that such a claim will be reasserted.

1577. The pirate is not entitled to use the flag of any nation; he is at war with all, and when he is unmistakably known, he may not only be searched, but captured by any public ship, whatever flag he may have assumed. But in

strictness, the ship of one nation has no right to search that bearing the flag of another, on suspicion of piracy. If the result of such a search is the ascertainment of the piratical character, the searcher has not committed any offence; but should the searched vessel prove innocent, and belong to a different nation, not only is compensation due to those interested in her and her cargo for any loss, inconvenience, or delay, but apology and reparation are also due to her sovereign, who should the more or less leniently regard the act according to the reasonableness of the suspicion that the ship was piratical, or if not, that she belonged to the nation whose vessel made the search.

1578. The right of search is a great concession to another state. America most properly refused to permit it in time of peace, on account of the total inadequacy, as well as uncertainty, of the compensation in cases of mistake.

1579. It is a concession only to belligerents, a concession to war. It springs out of the congress and conflict of rights. The neutral merchants have a right to traverse the sea, and to carry their commerce to every friendly port, to all the ports of those who are enemies of each other, and to sell their merchandise of every kind and description, from a silk shawl to a ship armed and provisioned; the belligerent has a right to intercept contraband, and to prevent the interruption of his maritime siege, and, as incidental to those rights, the right of visitation and search. But this power is conceded to the belligerent only on condition that if by mistake he capture innocent vessels, he make full compensation and amends. English prize courts recognized the concession, but the condition was rarely observed.

1580. WHERE.—A belligerent may search the neutral in any part of the open sea, or in the belligerent's own national waters, or in those of her allies, or in the national waters of his enemy and his allies. But a belligerent cannot search any vessel, enemy or neutral, in the national waters of a neutral state.

1581. **CONDUCT.**—Search, though a belligerent, is not a hostile right; it is to be exercised upon a ship which appears to be a friend, and when she is found to be neutral, upon the subject of a friendly state, although suspicion may arise as to the cargo she bears. If that contain military stores the penalty is measured, and the punishment is not to be unnecessarily increased. While it was deemed a right to seize the goods of an enemy in the neutral ship, the captor was under a peculiar duty to alleviate, by all possible means, the loss and inconvenience which the owner or master at peace with him might sustain from the detention of his unoffending vessel, for the purpose of taking out the cargo of his friend. Search must be conducted as an act of amity, in such a manner that if he detect no offence, the officer who has instituted it may feel that he and those on whom it has been inflicted part as friends.

1582. The cruiser's signal requiring submission to search should be as inoffensive as practicable,—the exhibition of her own national flag, and firing a gun at first without shot; there should be the least possible show of hostility. The vessel which institutes the search should, when convenient, remain a mile distant, and send an officer with an ordinary boat's crew. Whatever force is necessary, but no more, may be employed in the exercise of the duty. The officer who conducts it, so long as he acts in a lawful manner, is not responsible for damage which may occur to the ship or crew by her resistance.

1583. On the other hand, the neutral is bound to observe the like courtesy and friendly conduct towards the ships of war and of commerce of each belligerent, whatever sympathy he may entertain for the one, or whatever towards the other may be his sentiments of distrust or dislike. He must exhibit towards each all acts of friendship, and submit complacently to such inconveniences, however distressing, as are indispensable to the rights and conditions of war, and, as one of them, to the due exercise of the right of search.

1584. On the signal from the belligerent, the neutral

vessel should exhibit her own national flag, unless already displayed, and should lie-to if required by the cannon.

1585. Such is the ordinary conduct when the cruiser falls in with a vessel on the sea, or when one under no personal suspicion issues from even a suspected port; but rumour, and often distinct information, attaches such suspicion to a ship starting forth like a courser on the race, that little time is afforded for the interchange of signals, or the ceremonial to which we have referred.

1586. FLIGHT.—A ship is not bound to put herself in the way of, or without necessity to submit to the inconvenience of search, seizure, detention, prize-court expenses, loss of voyage, and other injuries, to gratify the suspicion of persons whose interest it is to suspect, whose right rests in its execution and the power of interception.

1587. Consequently, a ship is justified in escaping by flight and skill in navigation; she is entitled to pursue her course as speedily, and with as little inconvenience as she can, and to avoid alike cruisers, privateers, pirates, and the storms, rocks, and shoals, and other perils of the sea. She is exercising her right in flying with her cargo of shells and mortars as well as with her cargo of cinnamon and silks. The cruiser is exercising her right in the pursuit. Neither owes allegiance or duty to the other. The chase may seek the sanctuary of her own or any neutral shore; so also may she seek the asylum of the belligerent port, and the shelter and protection of the land batteries of the adversary of her pursuer.

1588. By parity of reason, she is entitled to fly to the floating batteries, the ships of war of either belligerent, to seek protection from the visitation which the pursuer desires to inflict.

1589. On the same principle, she may fly to the asylum afforded by the armed convoy of another neutral Power; although it is the duty of the commander of the convoy, except under convention, to refuse protection to the ships of any nation except his own.

1590. Flight involves no penalty; but prize courts have violated this law, and condemned vessels for seeking the protection of the hostile ships.

1591. Flight however involves some degree of suspicion that the cargo will not bear inspection, and, though not sufficient of itself, may give such a colour to other circumstances as to warrant detention for a more rigorous examination than can be prosecuted on the sea.

1592. It is said that the English prize courts were inclined to hold the attempt of a neutral to withdraw from search, simply by flight or evasion, sufficient to warrant their condemning her as prize. (3 Phil. 440, 441.) That is, they will rob a man of his property because he runs away.

1593. The belligerent has small right to complain of the trouble occasioned by the attempt to prevent flight or evasion; it is trivial indeed, when compared with the injury which the exercise of his process inflicts on the commerce of the neutral.

#### SECTION 9. DETENTION, ARREST, AND CAPTURE.

1594. These are consequences of the right of visitation and search. We have said that the visit is to ascertain whether the vessel is hostile, is freighted with contraband, or meditating the breach of blockade.

1595. The first proceeding is visitation,—that is, inquiry of the officers of the vessel; if that is satisfactory she may proceed, but if not, the visitation extends to inspection of papers, which may remove all suspicion; if so, she must be allowed to proceed. But if the inquiry still leave suspicion, she is to be detained for the institution of such search as can be conveniently pursued on the sea under the circumstances of the ships. Suspicion may be satisfied, and the vessel entitled to continue her voyage. It is the duty of the searcher to give a certificate of the result of his visit and examination, to obviate as much as possible the inconvenience of further molestation. Of course, new grounds of suspicion may

arise on another visit by the same or a different man-of-war. It is also the duty of the visiting commander to record on a principal paper notice of the blockade of any port which the neutral may be likely to approach.

1596. If reasonable suspicion remain after such search as the circumstances will permit, the ship is to be arrested and sent into the most convenient port of the belligerent for further examination before the officers appointed to conduct the preliminary inquiry, there to be subjected to further examination of her papers, her master, officers, and crew, and the cargo which she contains. Unless reasonable ground for suspicion remains, she must be discharged with a proper certificate of the investigation, and with reasonable compensation for the delay, inconvenience, and damage to which she has, without any fault of her own, been exposed.

1597. If reasonable ground of suspicion remain, she is to be brought under the jurisdiction of the prize court for further examination, and if found guilty to be condemned. The owners of the ship, and the owners of the cargo, are there entitled to appear to maintain their right to their property, and to resist the captor's claim. The ship as well as her cargo is to be deemed innocent until guilt is proved. Unless that is proved, she must be released from her arrest with full indemnity for the delay, inconvenience, damage, costs, and expenses to which, except by her own improper conduct, she has been exposed. If she is guilty, she and her cargo are wholly, or partially, according to the guilt of which they are convicted, to be condemned.

1598. Condemnation converts detention into capture from the moment when she was detained; until condemnation, although she is popularly said to have been captured, she is under arrest. When we come to treat of recapture, we shall have to make some further observations on this intermediate state.

1599. This is the law of nations; we shall have to consider to some extent how far it has been violated, how far it has been observed.

1600. We will, for want of better designations, use the words cruiser to designate the belligerent vessel which exercises the right of visitation, and merchantman to describe the vessel which is to be honoured with the visit, and captive to describe her when taken into custody, and captor to distinguish the cruiser which has taken her under his care.

1601. The attempt of the merchantman to escape, by false flag or by flight, warrants increased suspicion, and, as a consequence, pursuit. The production of ambiguous papers warrants further examination, the destruction of papers or the production of false papers increases the suspicion, the combination of these circumstances renders suspicion more intense. The vicinity of the ship to the port of a belligerent creates suspicion when the port is under blockade. These and other circumstances, especially information which the cruiser may have previously received, warrant detention and a more or less vigilant search. But they do not warrant arrest without further search or inquiry. The information may itself be false, the fictitious papers may be for purposes unconnected with the belligerent, the vicinity to the port may be in her route to a legitimate destination, or she may have been driven out of her course by stress of weather, or for necessary supplies.

1602. Though her cargo contain military stores, however formidable, the merchantman is entitled to proceed, whatever may be the information which the cruiser has previously obtained, unless he can find in her a warrant for justifiable suspicion; her flight and other circumstances already mentioned may intensify the causes of suspicion. False papers may, from their nature, unless their fabrication is reasonably explained, warrant the suspicion that the contraband is destined to the belligerent, and if the grounds of suspicion are strong, warrant her arrest.

1603. The law of nations does not require the merchantman to go unarmed; she may arm herself for defence against pirates with cannon and all the implements of war. An ex-

cessive armament, especially if her build is of a martial character, may warrant the suspicion that she constitutes contraband, and, with other circumstances, that she is proceeding to the market for ships of war. But a moderate armament of itself warrants no such suspicion, and, to justify her arrest in the character of contraband, the other grounds of suspicion must be exceedingly strong.

1604. Although the cargo is innocent, and the more so if it include munitions of war, her flight and similar acts, and especially false papers, warrant grave suspicion when she is approaching a blockaded port. If she loiter in that neighbourhood, if she hover about the offing, unless baffled or detained by the weather, the suspicion justly grows more intense that she contemplates breaking the blockade. Such circumstances warrant arrest.

1605. The prize court has held that the very fact of a ship coming out of a blockaded port with a cargo is probable cause of detention, unless the captors were satisfied that she was entitled to leave the port. (Otto.) The right of detention must depend, not on the captor being satisfied, but on whether the information which the master affords as to the time and circumstances of the loading, is such as ought to satisfy the captor that she is a privileged ship.

1606. It may sometimes occur that, although the grounds on which the captor suspected the ship or cargo would not have justified the detention, subsequent circumstances or even statements on the part of the master afford him, in "the indulgent consideration" of the prize court, an excuse, such as material variations between the ship's papers and the depositions on the preliminary examination. *Leucade*.

1607. The sailing under hostile colours, though assumed some time previously, and during a war between her alleged country and another, has been held sufficient to justify detention. *Caroline*.

1608. It has been held that detention is not justified simply by a vessel's real being different from her ostensible



destination, nor by her sailing wide of her ostensible destination, nor by her having deceived the custom house or other national authorities, nor by her having no log, nor by unimportant defects in her papers, nor by slight variations between her papers and the depositions. *Leucade*.

1609. A vessel may be detained a second time for the same offence, if the release was not authorized by the decree or order of the court, or for a subsequent offence after a decree for restitution on a previous alleged offence; but captors venturing on such a detention incur a very great risk of liability for costs and damages. (*Odess*).

1610. When there is sufficient cause for detaining the cargo there is sufficient for detaining the ship, and when there is sufficient for detaining the ship there is sufficient for detaining the cargo, unless either can be relieved by arrangement. The captors may, and, if convenient, they should, take the vessel to the port of destination and deliver the innocent cargo. If they do so, they become entitled to the freight. *Caroline*. *Fortuna*.

1611. RESISTANCE.—We have already observed that the rights of the belligerent do not compel the merchantman to sail unarmed. But she must not employ, or even threaten to employ, her armament to resist visitation or search. Were she permitted so to use her force, merchantmen, by congregating in fleets, might defy the cruisers of the belligerents, and, as in former times on the coasts of Africa and both the Indies, carry on an extensive warfare on their own account against nations with which their country is at peace. When the right of search is admitted by her sovereign, the merchantman must submit complacently, unless she can escape by flight.

1612. The prize court condemns the ship for resistance to search as for a distinct offence, irrespective of her character in other respects and of the cargo she bears. It condemns also the portions of the cargo which belong to the owner of the ship. It does not regard mere words or remonstrance

as resistance, without a display and a serious indication of the intention to exert force; but when such intention is manifested, it condemns for resistance although no conflict occurs. But it requires that the merchant be informed by competent authority, fully and satisfactorily, that the cruiser is entitled to search; that is, not only that she is a ship of war, but that her country is actually engaged in a war. (Maria.) To this extent the prize court acts within the just limits of the law.

1613. But the prize court has proceeded far beyond these limits in violation of neutral rights.

1614. **CONSTRUCTIVE RESISTANCE.**—The prize court has imputed to merchantmen sailing under the convoy of the royal ship of their nation the resistance, even the meditated resistance, of the guardian of their fleet. In doing so it violated the law of nations; for, inasmuch as the merchants acted under the authority of their sovereign, the responsibility rested with him. The merchants were not responsible, whether the convoy was or not justifiable. Moreover, the prize court usurped the functions of the state. By appointing the convoy, its sovereign may or may not have afforded cause of war. The determination of that question rests, not with the prize court, but with the prince; and until war has been commenced, the prize court by interposing violates alike the international and the municipal law. If a neutral merchantman fly to the protection of the convoy of another neutral power, she is alike exempt from the jurisdiction of the prize court; the appeal must be by the belligerent government to the sovereign of the convoying ship.

1615. The neutral merchant is entitled to visit and run to the fortified ports, and to take refuge under the range of the batteries of his belligerent friend; he is equally entitled to sail with that belligerent's merchant vessels or men-of-war. He is entitled to embark his wares and merchandise on board the one or the other, and the belligerent conveying them is entitled to exercise all his power of resistance

against his adversary, not the less because neutrals are in his company or neutral persons are on board his ship. The neutral encounters the accidents of the collision which may occur; but the lawful resistance of the hostile war ships or merchantmen is not to be imputed to him. By construing such association with the enemy into resistance, prize courts have in some cases transgressed, and in others contemplated transgression, of the law. Sampson. Nereide. Atalanta. Catherina. Fanny.

1616. If the neutral vessel take part in the battle, she violates the law of nations; if the neutral embark himself with his cargo in a belligerent man-of-war, he is a party to the conflict, for it is difficult to distinguish him from the fighting crew. The neutral vessel or owner of the cargo are guilty of actual, not constructive, resistance to the captor's right.

1617. **IN THE OFFENCE.**—Capture can only be effected while the ship is engaged in the offence. The hostile ship is in her nature, except when sailing under licence, engaged in the offence. The ship freighted with contraband is engaged in the offence from the beginning to the end of her voyage; but the only right of the belligerent is interception; he has no right to punish, for although termed guilty, she is not really guilty of any moral or international crime. The word offence, though conveniently applied, is used only in a peculiar sense. As soon as her voyage is ended and the contraband portion of her cargo deposited, there is an end of her offence, and with that the right of capture is gone. The ship, destined to a port under blockade, becomes an offender from the moment when, after notice of an actual blockade, she proceeds with the unqualified intention of entering the blockaded port; but the offence ceases at the moment when the blockade ceases, at the moment when she assumes a lawful destination, at the moment when she has effectually broken through the blockade and finished her voyage. Though ships of the blockading squadron are in

hot pursuit, the moment the blockade is raised or abandoned they must cease to pursue. If so many pursue her as to leave the port free from danger, the blockade is determined, and the right of capture is extinguished by the very act of pursuit. The right of capture is a belligerent right; all offence terminates, and the right of capture ceases, at the moment when the clock strikes the hour of peace, at the moment when either ship floats into the waters of a neutral realm. However nearly the conquest may be achieved, it is a crime to make, or continue the attack or pursuit in the time, or in the region, of peace. Betsy. Welvert. Lisette. Ionia.

1618. But the prize court has, in favour of captors, invented constructive continuations of the offending voyage. It has condemned a ship returning with an innocent cargo, because it had been purchased with the proceeds of a contraband freight. Rosalie. Nancy.

1619. An American vessel had sailed from her home to Russia; war broke out with England; she traded between England and another country on her way back, and was afterwards captured by an American vessel before she reached her home. It was held that she was captured in the continuation of her guilty voyage. The question of identity of voyage is perhaps immaterial in such a case, for her trading with the enemy was a violation of her municipal law, punishable at any time, and not an act which merely gave the right of interception and capture in the offence. Joseph.

1620. WHERE.—The right of capture may be exercised within the waters of the belligerent or any of his allies, or on the open sea. We have already shown that it cannot be exercised within neutral waters, or even beyond those limits, by the boats or tender of a ship which lies within the presidial frontier of a neutral state.

1621. BY WHOM.—Capture can only be lawfully made by commissioned ships of war, the public ships of the state,

for whose officers and crews the honour of the sovereign is responsible; except that an enemy-merchantman attacked is entitled to capture her assailant in self-defence.

1622. A ship destined to a blockaded port, in violation of the law of blockade, may be captured on her voyage by the blockading squadron or any cruiser she may encounter on the sea during the continuance of her offensive voyage and of the blockade; but a ship breaking out of a blockaded port can be captured only by a ship of the blockading squadron, or connected with it in maintaining the blockade; after she has escaped their pursuit, she may not be challenged by the cruisers, she has completed her offence and acquired a right to be free.

1623. JOINT.—It is not necessary to say much on joint capture, as it relates more to the division of the spoil than to the right or enjoyment of traversing the sea. But it may be repeated that a ship, her tender, and boats, are as one, and participate as joint captors. (Carl.) The ships of a belligerent in sight of an enemy are presumed to be intent on assisting to capture her, in the absence of inconsistent indications; all which join in pursuit are joint captors. But to constitute this joint interest, each ship which claims participation must, at the time of surrender, be in a position to see the prize, and the prize must be in a position to see every ship which claims to participate. The rule which prevails in war is adopted in the English courts in distributing the profits resulting from vessels captured in the transport of slaves. Brazil. Rebekah. Melane. Sociedade.

1624. COMPLETE.—In one sense capture is not complete until its lawfulness has been ascertained by the adjudication of the prize court. A judgment of condemnation gives the detention that effect from the moment when the captive was detained; but she is sometimes rescued before she can be brought within the jurisdiction of the court, and with reference to rescue, recapture, and salvage, a question sometimes arises as to whether the capture was physically, though

in law conditionally, complete. After it is complete, it is still only of a custodial character. The owner has been only dispossessed of his property, he has not been divested of it until condemnation. On final sentence of condemnation, the capture is perfect, and the title of the captor, or of him who claims under him, except against recapture or rescue, is indefeasible.

1625. Surrender may be indicated in various modes, as by lowering her sails to indicate relinquishment of the intention of flight, hoisting a white flag, or striking that which she had previously borne. At the moment when a vessel surrenders unconditionally to her pursuer or assailant, her capture is complete, although no men are put on board to maintain the conquest, unless the entire dominion of the prize is intercepted by renewal of the conflict, by escape, rescue, or flight. Escape requires no explanation: the ship is mistress of herself again; but rescue, as distinguished from recapture, is in different nations differently understood. So long as retention of the surrendered vessel is rendered uncertain by conflict with other ships of her nation, by the menacing approach of such ships, far more by their pursuit, she cannot be considered a prize; but as soon as she has been held in unmolested possession for twenty-four hours, or brought within the port, or under the effectual protection of the land batteries of the victor or of any of his allies, she is completely captured, the captor's property subject to the question whether she is lawful prize. *Whea.* 432, 436, 454. *Abb.* 590. *Pensamento.* Edward.

1626. EFFECT.—War is between the hostile states; and all captures effected by the subjects of either, whether by public or private ships, belong to the state. The effect of capture is to vest the property instantly in the sovereign, or as of his right in his grantees.

1627. The only title of the captor is under and to the extent of his sovereign's grant. Such grant is made by most states to those by whose efforts the conquest is achieved.

subject to various conditions,—generally to the right of the sovereign to restore if he think fit, at least at any time before a final sentence of condemnation, although that sentence is only intercepted by an appeal. *Alexander v. Duke of Wellington*.

1628. This conditional right of the grantees accrues simultaneously with the right of the state. As the right of the captors may fail or be forfeited by non-compliance with the conditions on which it depends, or by their misconduct, the right of the sovereign in the first case remains unaffected, or, in the second case, is restored. *Home v. Camden*. *Duckworth v. Tucker*.

1629. Such grant, to the full extent of the prizes, was first made in England by 6 Anne, c. 14. The last English Act on the subject is 17 Vict. c. 18, an Act limited in duration to the then existing war; by this Act (sec. 5) the benefit of prizes was granted to the captors by and according to the royal proclamation on the breaking out of the war with Russia, in 1854. It was enacted that the officers and crews of the Queen's ships of war, which included hired armed ships in her service, should have the whole right and interest in the proceeds of all goods and ships taken during the continuance of the hostilities, after adjudication as lawful prize, to be divided in the proportion and manner stated in the proclamation, or as the Queen should by a new proclamation direct.

1630. The same Act (sec. 6) gave the officers and crews of ships of war, after final condemnation, in the same manner or proportion, the sole right and interest in the proceeds of any captured arms, ammunition, stores of war, goods, or treasure, belonging to the state or to any public company of the enemy, upon land; and of any ships and goods laden therein in any creek, haven, or road defended by a fortress, or in any way belonging to the enemies, and empowered the Admiralty to proceed therein as in other questions of prize.

1631. The seventh section made provision for the distri-

bution of prize-money in conjoint expeditions of the marine and land forces.

1632. It (sec. 5) directed that, when a prize was taken by the Queen's ships acting in conjunction with the ships of an ally, the Admiralty on adjudication should apportion to such ally a share of the proceeds proportionate to the number of officers and men present and employed by the ally, compared with the number of the Queen's officers and men, without reference to their respective ranks, such share to be transmitted to the persons authorized by the ally to receive it; and (by sec. 6) it gave similar directions as to captures on land and in creeks, rivers, havens, and roads of the enemy.

1633. The same Act (sec. 11) gave the officers and crew of a ship of war present at the taking, sinking, burning, or otherwise destroying of any vessel of war, or privateer belonging to the enemy, a bounty of £5, in respect of every person who was alive on board the enemy's ship at the beginning of the attack or engagement. It directed (sec. 12) that the distribution of bounty, salvage, or recapture and share of prize-money, awarded by the court of an ally, should be according to the distribution of other prize-money.

1634. It (sec. 13) declared that vessels and goods captured by private vessels hired by or in the service of the Commissioners of Customs or Inland Revenue, should belong to the Queen in her office of Admiralty, and be applied as she should, after adjudication, by sign manual direct.

1635. It (sec. 41) declared that if the commander of a ship of war took any ship or goods by collusion or connivance with the enemy, and the vessel or goods were adjudged good prize, the prize should belong to the Crown, and that the captor should be liable, in the Admiralty, to a penalty not exceeding £1000,—one moiety to the Crown, and the other moiety to the party suing.

1636. CAPTOR'S CONDUCT TO PRIZE.—It is the duty of the captor to abstain from all unnecessary harshness towards the



master and crew, even though the ship be an undoubted enemy, or manifestly full of munitions of war. It is obvious that different degrees of rigour and precaution may be necessary, according to the character of the prize and of its crew; but the reasonable limits of restraint and control are not to be exceeded.

1637. Should the ship and cargo be ultimately condemned, any injury to them would fall upon the captors; but they are not entitled to anticipate a decision in their favour: they are officers to arrest her, not to treat her as confiscated until she has been condemned.

1638. In the event of acquittal, they are responsible in damage for all injury which has been occasioned by their negligence, and far more so for injury occasioned by their misconduct.

1639. They have no right to burn or destroy the prize, unless she is manifestly an enemy, and unless also it is necessary for the safety of themselves or their fellow-subjects. They are responsible for every act of wanton destruction or injury, especially to a neutral. They may not destroy a neutral on the plea of its being for the benefit of their own sovereign. Blockading ships which fire upon vessels attempting to break the blockade for the purpose of destroying, instead of endeavouring to capture them, are guilty of an atrocious violation of international law, of piracy, at least if any of the crew are killed.

1640. According to the English law, if the captors violate any of the Queen's instructions relating to prizes, or if they are guilty of any offence against the law of nations in relation to any vessel or goods captured as prize, or the persons taken on board her, the prize on condemnation belongs to the Crown. 17 Vict. c. 18, s. 46.

1641. And any person belonging to a ship of war who breaks bulk on board of any prize, with a view to embezzle any money, jewels, plate, goods, merchandise, tackle, furniture or apparel belonging to her, is liable, in the Admiralty

at the suit of the Crown, to forfeit to the Queen his whole share in the prize, and treble the value of such money or other articles, unless the judge shall consider the circumstances of the case such as to have rendered the appropriation necessary. 17 Vict. c. 18, s. 45.

1642. The captors are moreover bound to render their prize every assistance in their power consistently with their own safety. While in their custody she is under their protection.

1643. They are furthermore bound not to be dilatory in instituting the proper examination. They must take her with all reasonable expedition to the nearest convenient port, at which there is an officer for preliminary examination, within the jurisdiction of their own country or of an ally. If the vessel belong to the nation of an ally, she must be taken into a port belonging to the ally. If the captors neglect this duty, the claimant may compel performance by applying to the prize court for restitution.

1644. The English government in the last war directed that the prize should be brought into the most convenient port, with three or four of the principal persons on board for examination; that the documents found on board should be delivered to the judge, or appointed officer, on oath of a person who saw them there, that they had not been altered, and directed that the vessel, with all her goods, should be delivered into the custody of the officer of the court, or where there is none, to the officer of the customs, or navigation laws, for safe custody, till final judgment and order of the court. And it directed that the crew of hostile ships should be taken to a port where there was a depôt for prisoners of war, except that all women, children, and others, not military or naval, should be permitted to land. Polka.

1645. It was said in the case of the *Leucade*, that it may be justifiable, or even praiseworthy, in the captors to destroy an enemy's vessel? The bringing of her to adjudication is not called for by any respect for the right of the enemy-pro-

prietor, but that it is the first duty of the captor to bring in a neutral; that from the performance of this duty he can be exonerated only by showing that he was a *bonâ fide* possessor, and that it was impossible for him to discharge it; that no excuse for him as to inconvenience or difficulty can be admitted as between captors and claimants; that the loss of the ship alone is no answer; that the captor must show a valid cause for the detention as well as the loss. It was further said that if the ship be destroyed for reasons of policy alone, as to maintain a blockade or otherwise, the claimant is entitled to costs and damages. The general rule is, if a ship under neutral colours be not brought to a competent court for adjudication, the claimants are, as against the captor, entitled to costs and damages. Indeed, if a captor doubt his power to bring a neutral vessel to adjudication, it is his duty, under ordinary circumstances, to release her.

1646. Although the property in the prize vests instantaneously in the captors, subject to such conditions as may affect the grant, there is a fact to be ascertained before their right of property is absolute,—that is, that she was lawfully captured. This can be ascertained alone by the sentence of condemnation.

1647. As each nation claims to herself and for her warriors the right, and the property in the subject, of capture, she concedes the like right and property to every belligerent, whether she is or not a party to the war, and will not, except under extraordinary circumstances, permit the sentence of a foreign prize court to be questioned; so that the completeness of title by condemnation is recognized by the hostile nation, and by neutrals as well as by the court of the captor. The adjudication becomes the international title-deed of the vessel.

1648. If the vessel is acquitted or released, the title of her owner remains unaffected, except to the extent of the taxation inflicted by the prize court.

1649. Consequently after arrest, until condemnation, the

ship remains the property of her owner (whom it may be convenient to designate the dispossessed owner), subject to the conditional title of the captor, with such qualifications as the law of his sovereign has imposed upon it. The captor may therefore, subject to such qualifications, relinquish his title and release the neutral vessel to such owner. Vessels detained on suspicion of an intention to break a blockade are sometimes released on the master's security and engagement to alter his destination to a neutral port. *Hudson v. Gustier*. Diligentia.

1650. The military character and duty of the captor prohibit his so releasing a neutral as to permit her to enter a blockaded port, or to convey contraband in such a manner as to become available for the enemy.

1651. The captors have no authority to release a hostile ship of war, and, in the present state of opinion, would probably be considered unauthorized to release a merchantman belonging to the enemy.

1652. If the captor's sovereign release the captured merchantman after condemnation, or if the appellate court reverse the sentence of condemnation, she belongs to her dispossessed owner. *Charlotte*.

1653. The captors are however not unfrequently compelled to abandon their prize, from apprehension of the attack of the enemy, from the deficiency of their own crews or the exigencies of their situation, or from the state of the sea or the weather, from the impracticability of taking her to their own or a friendly port. Under such circumstances, as we have already seen, they may be justified, as it may be their duty, to destroy a ship undoubtedly belonging to the enemy, especially a ship of war; but they must be able to prove clearly that she was an enemy-ship, for a neutral they may not destroy. They may be justified under circumstances in taking on board their own ship or casting into the sea, or destroying the contraband cargo, but at the serious hazard of failing to prove by irrefragable evi-

dence that the cargo was contraband, and the necessity of destroying it. They must not usurp the province of the judge.

1654. It has been held in America, that a commander who cannot spare men from his crew to man a prize, or is forbidden by his country to do so, may sell or dispose of her, and afterwards proceed to adjudication in his own country. (*Jecker v. Montgomery*.) This is a dangerous decision; the captor is too deeply interested to be an impartial judge, and may, by such a proceeding, deprive the owner of his best evidence of the vessel's neutral character and innocence.

1655. If the captor sell or give his prize to a neutral, his title is divested, and she belongs again to her dispossessed owner, subject to payment of civil salvage to the purchaser, and if he bought her for the owner, to the amount, if any, which he paid (*Adventure*), if she was liable to confiscation.

1656. The title to a merchantman abandoned by her captor depends upon various circumstances. If not condemned or liable to condemnation, she belongs to her dispossessed owner, subject to civil salvage if she has been rescued from abandonment or danger.

1657. If she has been condemned or is liable to condemnation, and she is voluntarily abandoned and is captured a second time by an enemy, she belongs to him (*Lord Nelson. Diligentia*); if she is taken into the possession of a neutral, she belongs to the captor, subject to civil salvage (*Mary*); if she is taken into the possession of a ship of her own nation, she belongs, subject to civil salvage, to her dispossessed owner. (*John*.) If, being abandoned by her captor through apprehension of the enemy, she is taken by another ship of the first captor's nation, she belongs to the original captor (*Mary*), subject to payment of civil salvage to the second captor, unless his fault contributed to her abandonment.

1658. Captors, recaptors, and salvors have a right of possession against all persons, except the court and the officers appointed to take the vessels or property into their charge.

Other Government officers, whether military or civil, have no right to take either prize or property from captors or salvors. Blendenhall.

1659. RANSOM gave a far greater privilege to a ship relinquished by her captors than simple release; it transferred to the owner the right of the captor.

In the romantic times of chivalry and private maritime adventure, the feudal chieftain and the captain of the gallant vessel claimed his prisoner and his prize by an unquestionable right, and recognized no paramount title. A splendid prize, indeed, was the lord of an industrious region; his ransom was measured by all his own resources, and all that could be extorted or obtained by taxation and borrowing, and by sale of possessions and privileges, from his vassals.

1660. Ransom was a contract founded on the assumed property of the captor in the captive, and a transfer of that right for a stipulated consideration. The countrymen and allies of the captor were bound to respect that contract, for his recompense depended on its fulfilment; the contract was respected also by the country to which the captive belonged. It was generally effected by a document stipulating that for the agreed consideration usually secured by bills of exchange (ransom bills), and sometimes by leaving a hostage, the liberated vessel should be at liberty to continue her voyage to the port of her destination, or to sail to some neutral port, or return to her home within a limited period.

1661. Every commission to capture was assumed to carry with it an authority to ransom, and to give a safe-conduct, which, during the prescribed voyage and the time limited, gave immunity from further molestation. And even if the ship loitered or deviated, her owners were not doubly liable, for if captured the ship was sold and her owner was released from the bills, which were paid out of her proceeds in diminution of the profits of the second captor.

1662. The ransom bill was not vacated by the death of

the hostage, nor by the wreck of the vessel, unless total, nor by injury from any other peril of the sea, unless it occasioned destruction; not even when it contained a condition avoiding it in case of wreck or loss; otherwise, when the bill was for a large amount, the master might be tempted to incur an inferior danger for the purpose of evading his obligation.

1663. A ransom bill constituted part of the treasure of the vessel which had acquired it, so that if she were captured by her enemy, it passed to him by right of conquest, even though payable by his fellow-subject.

1664. The ransom bill could not be recovered by the enemy who had obtained it until the war was at an end, but in some nations it could be recovered by a neutral to whom he had transferred it; and if the bill was general, it would pass, like other bills of exchange, as a negotiable instrument, the consideration for which was unknown.

1665. Ransom of ships has been abolished in most countries. In England, it is unlawful for any of the Queen's subjects to ransom, or enter into any contract or agreement for ransoming, any vessel or goods belonging to British subjects captured by the enemy; and any such agreement or contract and all securities are void, and the person ransoming such goods or vessel is liable in the Court of Admiralty to a penalty of £500, unless it appear that the circumstances were such as to justify the ransoming; and any commander of a British ship of war who agrees to ransom a vessel or goods taken as prize, and in pursuance of such agreement or otherwise, by collusion, quitting, setting at liberty, restoring, or discharging such vessel or goods, is liable to be sued in the Admiralty, and to such fine as that Court shall adjudge, unless it appear that the circumstances justified the ransom. (17 Vict. c. 18, ss. 42-44.) Ransom is said to be still accordant with the law of America. Whea. 530.

1666. The right of ransom of enemy's goods in neutral

ships has been virtually abolished by the declaration of Paris, which has rendered such property free from capture.

1667. The right of ransoming contraband of war could never properly exist; to permit it would be to authorize military officers to sell their country; that is, to sell arms and munitions of war to the enemy, or at least to deprive their country of military instruments and stores which it might find useful.

1668. The same argument would have applied to the authority which warranted the ransoming of hostile ships.

1669. It should be observed that the statute 17 Vict. c. 18, s. 43, says, taken as prize, without confining itself to hostile vessels.

1670. **RESCUE AND RECAPTURE.**—Rescue is the extrication from a danger, and, with reference to the question of prize, is the recovery of the ship for her owner. The retaking of a ship is rescue until the title of the dispossessed owner is extinguished; the retaking of her afterwards is recapture. Rescue restores the ship to her dispossessed owners on payment of military, and sometimes also civil, salvage to the rescuers. Recapture vests the property of the vessel in those who retook her from the foe.

1671. The notion of captors was very simple. B. had captured A.'s vessel; it therefore became the property of B., and A. had no more to do with it. If C., whether the countryman or brother of A., or even the commander of a convoy from which the vessel had been wrested through his negligence, captured the vessel from B., he became entitled by the repetition of the right of conquest, which had given the vessel to B.; he had taken the property of B., an enemy, acquired as effectually by conquest as by purchase. The antecedent title was immaterial, and therefore not the subject of inquiry.

“They there observe the ancient rule,  
Pursue the good old plan,  
That they shall take who have the power,  
And they shall keep who can.”—Scott.



1672. The right of rescue can only be exercised by a belligerent against a belligerent or a pirate. A belligerent may rescue from his enemy either his own ship, another ship of his own country, a ship of an ally, or the ship of a neutral, whether public or private, for it is his duty to assist himself, his countrymen, his allies, and his friends. (Helen.) The right cannot be exercised either by or against a neutral; therefore a captured ship in the possession of a neutral cannot be rescued. If lawfully condemned, she is irreclaimable; if not, she must be reclaimed by process of law or by diplomatic intervention.

1673. It is not lawful for even the captured neutral to attempt rescue either by her own crew or with the assistance of her mercantile companions. The attempt is equivalent to resistance, but it is punishable only when unsuccessful, unless, perhaps, death or personal injury has been occasioned in the conflict.

1674. Under certain conditions, it is now agreed that the retaking or delivery of the vessel is to be regarded as rescue for the benefit of the owner, but in some nations the right of the dispossessed owner is less regarded than in others.

1675. All agree that it is rescue if the extrication is effected before the calamity is complete; as if the vessel is delivered by the insurrection of her own crew, or by the intervention of a friendly vessel before she has unconditionally surrendered, or by reconquest, by her consorts or associates, before she has been completely captured. Whea. 454. Franklin. Belb.

1676. A vessel, whether national or neutral, is rescued, not recaptured, if wrested from the belligerent by his adversary before the capture is complete.

1677. A ship taken from a pirate is rescued, not recaptured, for the piratical capture could not divest the owner's right. (Whea. 437. 6 Geo. IV. c. 49. Hebe.) Some nations do not recognize this principle, but give the vessel to the captor. If no owner can be found, she belongs to the state, which may of course confer it on the captor,

1678. As between captor, recaptor, and captor from the recaptor, the divesting effect of the recapture, and of the capture from the recaptor, is the same. As between them the preceding title is extinguished, whether it be the right to the vessel as prize, or the right to salvage for her rescue. 4 Rob. 217 *a*. *Astrea*. 2 Valin sur l'Ord. 257-259. 6 *Traité des Prises*, 1. Pothier de Propriété, 99. Wh. 454.

1679. All agree that something more may be requisite to give title to recaptors, than that which may be sufficient to confer title on the original captors, when they can keep the prize; but as to the circumstances necessary to eliminate entirely the title of the original owner, there is little accord among the nations. This want of agreement has led to confusion in the use of the word recapture. In a technical sense, its signification recedes before the rights of the dispossessed owner to restoration of his vessel on salvage.

1680. Physically, recapture is simply capture of a ship which had been previously completely captured; consequently, its incidents and the circumstances essential to its becoming complete are the same. Abb. 591. Edward. Progress.

1681. Legally, recapture is after the complete extinction of the title of the dispossessed owner, which occurs under different circumstances in different nations.

1682. The English law revests the prize in the original owner, subject to salvage, if she is retaken at any time before she has been equipped by the enemy as a ship of war. (Gage.) And it very properly authorizes the salvors to permit the vessel which they have retaken, under certain circumstances, to continue her voyage.

1683. The British Prize Act, 1854, sec. 9, directs that any vessel or goods belonging to a British subject, captured by the enemy and recaptured by a ship of war, shall be adjudged by the Admiralty to be restored to the owner on payment, in lieu of salvage, of one-eighth of the true value, such salvage to be distributed in the same manner as prize-money.

1684. But if the ship of a British subject captured by the enemy has been set forth or used by the enemy as a vessel of war, and is afterwards recaptured, she is not to be restored, but is to be adjudged lawful prize for the benefit of the captors. Prize Act, 1854, s. 9.

1685. The recaptors of a British ship, whether in ballast or laden, before she has been carried into an enemy's port, may permit her to prosecute her voyage, and may defer proceeding to adjudication until her return to a British port, and the master or owner may unload and dispose of the cargo before adjudication. If she does not return to a British port within six months, the recaptors may at once proceed in the Admiralty to recover the one-eighth salvage. *Ib.* 10.

1686. In America, the property of the original owner is divested by condemnation, and not till then, whether the prize has or not been equipped by the enemy for war. Act of Congress, 3 Mar. 1800, ch. 14. If retaken before condemnation, she reverts to her former owner, subject to salvage, although fitted out for war; if retaken after condemnation, she is the absolute property of the recaptors.

1687. The mere employment of a prize in the enemy's military service without a commission, although she was previously armed, or her armament is increased, is not a setting forth by the enemy such as to divest the owner of his title. (*Georgina*. *Horatio Nelson*.) But actual employment of a prize already carrying arms in military operations, under the direction of the public authority, as of the Minister of Marine, with or without an increase of armament, not only with a royal commission, or even the commission of a privateer, but without any formal commission, and without being formally comprised in the enemy's military service, is a setting forth by the enemy. *Ceylon*. *Rosario*. *Brigada*. *Active*.

1688. In England if the prize be once set forth for war by the enemy the title of the original owner is irretrievably

gona; her subsequent employment as a merchant ship does not revive it; she becomes the recaptors' spoil. Actif.

1689. In France, the prize was restored at rates of salvage differing according to whether she was retaken before or after twenty-four hours from her capture; except that a prize recaptured by a privateer after twenty-four hours' possession by the enemy became the absolute property of the recaptors. Whea. 449. Hautefeuille, *Droit des Gens Neutres*, iv. 391.

1690. And a prize abandoned before she was taken into port was restored at a reasonable but unsettled rate of salvage, although she had been more than twenty-four hours in hostile possession, if claimed within a year and a day. Whea. 450. *Marine Ord.* 1681, iii. t. 9, art. 9.

1691. In Spain, the prize recaptured by a royal ship, whether before or after twenty-four hours' possession, was restored without salvage; the prize recaptured by a privateer within twenty-four hours was restored on salvage, but if not recaptured till after twenty-four hours, she became the property of the recaptors. And if her ally adopted an equally liberal rule, Spain restored on salvage the ship of the ally captured by the common enemy, whether by a royal or a private vessel. Spain, by treaty, February 5, 1814, agreed to restore on salvage English ships recaptured whether within or after twenty-four hours, though carried into the enemy's port, or even condemned, whether the capture were by a royal or a private vessel.

1692. In Portugal, the prize was restored without reference to twenty-four hours' possession. In Denmark and Sweden, the prize was restored on salvage, irrespective of the length of hostile tenure. In Holland, she was restored on salvage, varying according to the period of hostile possession.

1693. England, America, and Spain, and indeed most nations, with reference to prizes taken by the enemy from their allies, and recaptured by their ships, act towards the allies on terms of reciprocity, treating them and their owners with

the same favour as the ships and subjects of their own state are treated by the ally ; or otherwise act on terms stipulated by antecedent treaty, or by convention made on the occasion. (Santa Cruz. Victoria. San Francisco.) It is obvious that arrangements should be made between the allies on a subject involved in so much complication, whenever they engage in war.

1694. **MILITARY SALVAGE** is distinguished from civil salvage as being the reward of those who rescue ship or property from the foe. Although the officers and crews of ships of war owe to their country the duty of rescuing, if they can, her captured ships, whether of war or of commerce, they are entitled to a fair and liberal reward out of the property rescued. Even the commander and crew of a convoy ship are entitled to a reasonable compensation for recovering a vessel which had been torn from under her wing, although it was her special duty to afford protection. (Wight.) Of course, they may by negligence forfeit all right to such remuneration.

1695. The right attaches upon the property rescued, so that if the enemy again wrest the vessel from the rescuers, their title to salvage is defeated to the same extent as that of the owners, but if she be afterwards again rescued, or if she be released or restored ; when title recurs to the owners, it is with the lien of salvage upon it (Whea. 444. Abb. 593. Charlotte), according to the merits and efficacy of the services of the salvors, except so far as it may be affected by any prescribed proportion.

1696. When a neutral vessel is wrested by one belligerent from his adversary, she is liable to salvage, if she would have been liable to condemnation, according to the law of nations, or even according to the practice of the prize court from which she has been rescued, for in such case she has been saved for the owner. (Whea. 439-443. Statira.) But if she was not liable to condemnation, she is not subject to salvage, she has not been relieved from any danger.

1697. The captor of a vessel from a pirate is entitled to salvage, whether she is reclaimed, or belongs to the state in the absence of a known owner.

1698. RATE.—The English law, 6 Geo. IV. c. 49, allowed as salvage for capture from a pirate one-fourth of the value of the ship and cargo. The rate allowed differs in different nations; some treat the ship taken from the pirate as prize of war.

1699. Privateers were deemed worthy of a higher rate of salvage than the public vessels, for the latter were subject to the duty of recovering the ships of their country; but as the privateers were merely commissioned to capture on their own account, they were deemed less bound by this obligation.

1700. Of the value of the ship and cargo retaken before she was set forth for war by the enemy, the allowance for salvage under 17 Vict. c. 18, s. 9, was one-eighth to a ship of war, one-sixth to a privateer or other ship under the Crown's protection, and such amount as the court might think reasonable to a public and private ship jointly engaged in the rescue.

1701. In America, we have seen that the prize, if uncondemned, reverted to the original owner, whether she had or not been set forth by the enemy; the rate of salvage was however different: if set forth, whether armed at the time of her capture or afterwards armed by the enemy, the recaptors were entitled to half her value for salvage; if she had not been set forth, the salvage was one-eighth.

1702. There, a government vessel recaptured by a private ship was liable to pay,—if an armed vessel, one-half; if an unarmed vessel, one-sixth of her value. If she were recaptured by another ship belonging to the government, she paid,—if armed, one-fourth of her value; if unarmed, one-twelfth. (Whea. 448, 449.) And the cargo in the public armed ship paid the same rate of salvage.

1703. In France, the rate of salvage was one-thirtieth of the value if retaken by a public ship within, and one-tenth

if retaken after, a possession of twenty-four hours; one-third if retaken by a privateer within twenty-four hours; but if taken afterwards, she was the corsair's prey.

1704. In Spain, the ship of a subject paid no salvage to the royal ship for the service of recapture; but paid the privateer, if recaptured within twenty-four hours, one-half her value. If recaptured afterwards, she became the prize of the corsair. The ship of an ally, acting on the same terms, was redeemed by salvage of one-eighth of her value to the recaptor if a royal ship, and one-sixth if a privateer. Such were the rates stipulated by her treaty with England.

1705. In Portugal, the salvage was, irrespective of time of possession, one-eighth if recaptured by a king's ship, one-fifth if recaptured by a privateer. In Denmark, the salvage was one-third of the ship's value. In Sweden, it was one-half.

1706. **VALUE.**—The valuation of the property in respect of which the salvage is payable should be, not at the place of recapture, but that at which the restitution occurs, or the nearest at which it may be advantageously sold. (Progress.) Whether armed or unarmed, the private ship and cargo in general pay the same rate of salvage. When that rate has not been prescribed by positive law, it is in the discretion of the court, and ought to be in proportion to the danger, the expense, and labour incurred, and the efficiency of the service rendered. (Talbot v. Seeman.) Indeed, the principles by which the rate of civil salvage is governed in all respects apply.

1707. **APPORTIONMENT.**—This is sometimes arbitrarily prescribed by the sovereign; but in the absence of a specific rule, the principle of distribution of civil salvage should regulate that given for military aid. Military salvage is also a strictly personal reward.

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## CHAPTER XIII.

## PRIZE COURT.

"*Væ victis*,"—Eugénie.

1708. PRIZE COURTS can be established only in the belligerent countries. Contrary to all ordinary principles of adjudication, an interested party alone can be the judge. No neutral nation or court can take upon itself the responsibility of adjudicating between two nations, whether belligerents or neutrals; nor have nations entering upon hostilities a right to impose upon neutrals any such responsibility.

1709. If a neutral exercised the judicial office, it might become involved in war with other neutrals, on account of unsatisfactory decisions between the subjects of a belligerent and a neutral state. By sanctioning to some extent this anomalous judicature, each neutral nation retains to itself the right of reclamation against the belligerents for unjust judgment against its subjects. The adjudication of the prize court is not the subject of revision beyond the ultimate court of appeal in the belligerent country as to the title to the particular subject of its sentence; but it is the subject of reclamation on the part of the government of the country whose subject has been wronged by a judgment contrary to the law of nations. 2 Rutherford's Inst. 9, s. 19. Whea. 260-266.

1710. On such reclamations, in some cases a mixed commission of persons appointed by both nations has been constituted to determine complaints of condemnation alleged to be unjust, as between England and America under the treaty of 1794. That tribunal most properly overruled, as between the nations, the objection that the case had been determined by the Lords of Appeal in prize cases. Such decision gives a right to reparation.



1711. When several nations are allied in the war, they in effect constitute one belligerent, and their countries one country, for the purposes of the war. The ships of each may take the captured vessels for trial before the prize officers and prize courts of the ally, and that court has jurisdiction to condemn or acquit them. The allies undertake to neutral nations a common responsibility, a common obligation to make compensation, and a common obligation to support each other. It is necessary therefore that this construction of the law of nations should be consentaneous, otherwise serious danger of disruption of their alliance may ensue.

1712. Every country is, or ought to be, solicitous for the welfare of her own subjects, and must be assumed to be the best judge, not only of their interests, but also of their inducements and motives.

1713. When therefore two nations in alliance are warring against another, each of the allies is entitled to require that if any of the merchantmen belonging to it is captured by the ship of the ally, her trial shall be before the tribunal of her own country.

1714. This principle was acted upon in the convention between England and France for the Russian war in 1854.

1715. When the capture is joint by vessels of two allies, the prize should be brought under the jurisdiction of the country of the superior officer. But if the prize is actually captured by a ship belonging to one of the allies, it should be taken to the port of his country, although the prize was intimidated by even a superior ship of the other.

1716. A belligerent cannot establish a prize court within the limits of the dominions of any neutral nation, even with the consent of the neutral government. Neither its ambassadors nor its consuls can possess any such jurisdiction within the limits of another sovereignty, for which its action may compromise the neutral. It is a breach of neutrality, and a contravention of the laws of nations to permit it. The sentence of a court in such a situation has no force ; it

does not interfere with further judicial proceeding; it is simply null and void.

1717. If a capture is effected in the waters of a neutral, or by a ship unlawfully fitted out from her ports, or if a belligerent brings a prize into a port of her own country, the neutral does not exercise a prize court jurisdiction to inquire into the question of prize, but compels the release of the vessel which has been captured, in vindication of her sovereign right.

1718. The prize court is temporary. It is a tribunal for whose jurisdiction there is no office during peace. It is the duty of every sovereign on the breaking out of war to establish a proper forum for adjudication on the propriety of captures. In England and some other countries the office is committed to the Admiralty by a commission or warrant from the sovereign, giving a jurisdiction limited to the particular war; in other countries it is committed to some one of the ordinary tribunals.

1719. The last institution of a prize court in England was on the outbreak of the war with Russia, in 1854. (17 Vict. c. 18, sec. 57.) It was to continue in force during that war and no longer, except as to such matters and things as should then be depending in judgment in the Admiralty, or before the Judicial Committee of the Privy Council, or any court of record, and in finally disposing of such matters as should arise out of them in relation to that Act.

1720. In the British Empire the Admiralty constitutes the prize court, with an appeal to the Judicial Committee of the Privy Council. (17 Vict. c. 18.) We use the expression Admiralty to signify the Judicial Court of the Admiralty.

1721. Although the prize court is temporary, and limited to the existence of war and the matters arising out of the war, it can entertain jurisdiction over a capture made after the war has ceased, as a matter which has sprung out of it. But although not bound by the Statute of Limitations, it will not entertain stale demands, at least unless very good reasons

are assigned for the delay. Cargo ex Katharine. Mentor. Susanna.

1722. The jurisdiction of the prize court, like that of the Admiralty, is against the thing; it must therefore be brought within the scope of its jurisdiction for trial. In England, exception to this rule has only been allowed under very extraordinary circumstances. (Polka.) It is, under some circumstances, permitted by the English Prize Act when recaptured vessels have been allowed to proceed.

1723. In America, it has been held that property may be condemned in the court of the captor though lying in a neutral country, but only while in the legal possession of the captor, not after it has been taken from him into the custody of a neutral court. Santissima Trinidad.

1724. Where the Vice-Admiralty Courts have jurisdiction in capture, the jurisdiction of the Court of Admiralty is not excluded. Brazil.

1725. An alien enemy has, in some cases, a right to sue in the prize court, but his claim must state the ground on which his right to sue there is founded, and an omission to do so must be amended before his claim can be received. Troija.

1726. The adjudication of the court of final appeal or of the prize court, unappealed from, is conclusive on the right of property in the prize. Except that a sentence of condemnation of a vessel captured in the waters of a neutral state is void for want of jurisdiction, and a sentence of condemnation of a vessel captured by a ship fitted out and armed by the subjects of a nation neutral to the country to which the prize belongs is also void, as against the law of nations and the allegiance of the captors. The neutral sovereign in whose territories or by whose subjects the ship was captured, has a right to reclaim it, and to retake it on the open sea or within his maritime domain.

1727. The jurisdiction of the prize court excludes in the case of capture the jurisdiction of the ordinary tribunals, at

least as against the commissioned officers of the Crown. Even a British subject cannot maintain, against the captain of a man-of-war, an action for seizing his ship as an enemy; his remedy is in the prize court, for damages as well as for restoration. *De Caux v. Eden*.

1728. PRELIMINARY EXAMINATION.—Officers, rather than courts, are appointed under the prize court in the considerable seaports of every maritime belligerent power to examine the masters and principal officers of the ships brought in as prizes on interrogatories, called the preparatory examination, and to investigate the papers. If they find no sufficient ground for condemnation, or for such suspicion as to render it proper to call for further proof, these officers discharge the ship.

1729. According to the English Prize Act, sec. 16, on a vessel or goods captured as prize being brought into port, the captor or one of his chief officers, or some person present at the capture, is to bring or send, as soon as possible, three or four of the principal persons belonging to the captured ship, of whom, if possible, two are to be the master, supercargo, mate, or boatswain, before the judge of the Admiralty or the person lawfully commissioned in that behalf, by whom they are to be sworn and examined upon the standing interrogatories. This preparatory examination is to be concluded, unless good reason can be shown for an extension of time, within five days after request to the judge of the Admiralty.

1730. The captor (sec. 17), at the time of producing such persons for examination, and before any monition is issued, must deliver into the registry of the Admiralty all such books, papers, passes, sea-briefs, charterparties, bills of lading, cockets, letters, and other documents and writings as are delivered up or found on board the vessel, and the captor or one of his chief officers, or some other person who was present at the capture and saw such papers and writings delivered up or found on board at the time of the capture,

must make oath that such papers and writings are brought and delivered in as they were received and taken, without any fraud or addition, subduction, alteration, or embezzlement whatever, or otherwise must account for their absence or altered plight and condition upon oath; and in the event of no such books, papers, etc., being delivered up as found on board the vessel, such captor, chief officer, or other person, must make oath to that effect. Directions are given for the translation of such of the documents as may be agreed upon by the captor and claimant.

1781. If no claim (sec. 19) is entered in usual form and verified on oath, or if the claimant does not give security for £60 for costs within five days after entering the claim, the judge is to proceed, within three days after request, to decree the usual monition returnable in twenty days, citing all persons in general to show cause why the vessel or goods should not be condemned as prize; and upon return of the monition duly executed, the judge is, upon production of the preparatory examinations and of the books, papers, and other documents, to proceed with convenient speed to release or condemn the vessel or goods, with power to allow further time for a claim to be entered.

1782. If (sec. 20) a claim verified on oath is entered and security given, and there appears to be no occasion to call for further proof, the judge is to proceed, as soon as convenient, to adjudication.

1783. If (sec. 21) the captors neglect, after the vessel or goods are brought in, to institute proceedings, the judge, on a claim entered and security given, is to decree a monition against the captors, returnable in six days, to appear and proceed to adjudication; and on the return of the monition duly served, the judge is to proceed.

1784. If (sec. 22) on the production of the preparatory examination and papers it appears doubtful to the judge whether the capture is lawful prize or not, he may direct further proof to be adduced either by affidavit or by exa-

mining witnesses on pleadings, or by the production of any further papers or documents as to him shall seem meet, and upon the production of such further proof he may proceed to adjudication.

1735. The captors are not in general allowed to adduce further proof in aid of the evidence against the vessel. They are in general bound by the evidence of the men and documents found on board, the position and circumstances in which she is found, and the occurrences at the time of the capture. There seems to have been an inclination to admit evidence of extraneous matters to enable them to escape costs and damages when the ship was entitled to acquittal. *Leucade. Haabet.*

1736. No claim (sec. 23) by an asserted joint captor is to be admitted before condemnation until he gives security to contribute his proportion of the expenses, costs, and damages which may be incurred by or awarded against the actual captor on account of the capture or detention, or, after final condemnation, until he shall have paid his proportion of the expenses of the condemnation, and unless he show sufficient cause why such claim was not asserted before the return of the monition. But this does not apply to the asserted interest of a flag-officer claiming a share of the prize in right of his flag.

1737. Further proof is required when there is a material discrepancy between the preliminary examination and the papers found on board the ship, or when the papers are contradictory or materially inconsistent or when there is a deficiency in the evidence of the master as to the ownership of property, or when the bill of sale under which the ownership is asserted is not produced, or when there has been a suspicious destruction of papers. But the spoliation and even fabrication of papers must be considered with reference to the circumstances under which it occurred. The one or the other might have been resorted to for the purpose of avoiding a different danger. The objection to papers

as fictitious does not apply when simulated documents are necessary for the occupation of the vessel, as where she is engaged with the licence of the state in trade with the enemy. *Otto. Fidentia. Jobanna. Maria.*

1735. A vessel captured in the neighbourhood of a blockaded port, and sixty or seventy miles out of the course to her alleged destination, cannot be restored without further proof. *Chryssya.*

1739. Permission to adduce further proof has been refused where there has been an attempt to deceive the court by simulated papers. *Ida.*

1740. When there is no reasonable suspicion of an intention to break blockade, as when her legal destination appears by the ship's papers and the fair conclusion from the primary depositions, the court declines to hear the evidence from the captors as to the place of capture for the purpose of raising a presumption of an illegal destination. *Aline. Fortuna.*

1741. When either the claimant or the captor asks permission to adduce further proof, he must, at the peril of costs, state what he proposes to prove. *Aline. Panaja.*

1742. The prize is now, according to the law of England, as well as of other countries, to be taken under the custody of the court. The vessels and goods brought into port within the jurisdiction of the Court of Admiralty, to be proceeded against to condemnation as prize, must be forthwith, without breaking bulk, delivered into the custody or care of the marshal, his substitute, or other officer appointed by the court; or if there be no such officer, to the collector, comptroller, or other principal officer of the customs or of the navigation laws at such port, and must be retained in such custody, subject to the control of the court. Prize Act, sec. 15.

1743. When it appears desirable, from the nature of the property, the probable length of the proceedings, or other sufficient cause, the court is authorized to cause the ship to

be valued and sold, and the goods to be unladen and warehoused or sold, and the proceeds to be carried to a public account, for the purpose of being paid to the claimant in case of a decree for restoration, or to be distributed among the captors in case of condemnation. Prize Act, s. 24.

1744. Or the court may direct the vessel or goods to be appraised and delivered to the claimant, upon his giving security to pay the captor the appraised value in case of condemnation. *Ib.* s. 25.

1745. The judge may direct the captor to give security to pay such costs and damages as he may award in case the vessel or goods should not be condemned as prize. *Ib.*

1746. Although the court provided no security for the shipowner or merchant if his ship had been unjustly seized, it would not permit him to appear to claim his property and to resist the sentence against it, until he gave security to the amount of £60 to answer costs in case of condemnation; nor was he allowed to appeal against the "reason and justice" of this tribunal without giving security to the amount of £200, called in the Act good and sufficient security to answer the costs of the appeal. 3 Phil. 555, 556. Prize Act, sec. 33.

1747. The British Prize Act, 1854, has to some extent obviated the grievance by enabling the court to require security from the captors, and in some cases, on sufficient security, to liberate the vessel.

1748. On captures by commissioned officers, the Crown prosecutes by the Queen's Advocate; on captures by persons not commissioned, including the officers of customs, the Admiralty prosecutes by its advocate. Either may decline to proceed further; but his doing so does not preclude the court from awarding costs and damages. Neptune.

1749. ADJUDICATION.—Prize courts ought to be international tribunals, except in the case of piratical or unjustifiable attack or resistance, or some violation of the law or nature; the questions before them are not as to the guilt



or innocence, although the abuse of those words, and the misapprehension of the significancy of the word offence, lead them and their practitioners to treat the captors as a maritime police, and the captured ships and their owners as criminals, and to regard the word neutral as meaning something very different from friend. The true office of these courts is to decide in the conflict of incompatible rights. The merchant is as innocent in the attempt to carry on his commerce as the belligerent in his attempt to interrupt it. The vanquished enemy is as innocent as the victor. Cruisers and blockading squadrons are exercising their rights, but they do not constitute a maritime police.

1750. The law which the prize court is bound to administer, except as to the condemnation of pirates or of the ships of its own nation, is the international law, without regard to the ordinances of its sovereign, so far as they are in contravention of that law. No precedents of the prize courts of his own nation impose an obligation upon the judge; as establishing the law, he may refer alike to those of his own and every other country in aid of his judgment, and to enable him to discover the law. Although precedent may in municipal questions, it cannot in international controversies, constitute a law. Such a court is not even bound by the particular judgment of a foreign court, if inconsistent with the generally accepted law of nations.

1751. The precedents to which the English are in the



made at a peculiarly unhappy time. Adventure in maritime war still pre- of piracy had not been eliminated, privateers still covered the sea, over a sovereign, and exercised a despotic a universal confederacy against her, an half of Europe, under a military and in arms. The nation was delirious nce, and fury. The national sensation al. Judgments delivered in such a mood

of mind, however eloquent, erudite, or ingenious, are not to be accepted as the oracles of reason or the enunciations of an impartial law.

1752. The office of the judge of the prize-court is well described by Lord Stowell in the case of the *Maria*:—"In forming that judgment, I trust that it has not escaped my anxious recollection for one moment what it is that the duty of my station calls for from me,—namely, to consider myself as stationed here, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent states, some happening to be neutral, and some to be belligerent. The seat of judicial authority is indeed locally here,—in the belligerent country,—according to the known law and practice of nations; but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm; to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances; and to impose no duties on Sweden as a neutral country which he could not admit to belong to Great Britain in the same character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the universal law upon the question; a question regarding one of the most important rights of belligerent nations relatively to neutrals." The judgment which the eloquent judge delivered in that case was a melancholy illustration of his description.

1753. THE ENEMY'S ship and the cargo on board belonging to the enemy are confiscated to the use of the captors.

1754. The proper course is to ascertain who is the real owner of the ship by ascertaining her true national character, and if she is hostile, to ascertain not merely who is the owner of the whole, but of every part of the cargo; and

there the inquiry should end. For if the ship belonged to the enemy, she, and so much of the cargo as belonged to the enemy, belong to the captor, and what belonged to the neutral cannot consistently with law be taken from him. If the ship belonged to the neutral, the cargo is exempt from inquiry, for, although it belonged to the enemy, it is protected by the right of the neutral.

1755. Even municipal courts for many purposes inquire into the real ownership of the vessel and recognize equitable interests, although for other purposes they regard only the ostensible title. (3 M. S. A. 3. *Hackwood v. Lyall*. *Myers v. Willis*.) The inquiry in the prize court should be confined to the veritable title, not as to particular interests, but to ascertain to what nation she in fact belongs; for the ship is a unity; if she belongs to the adverse belligerent, it matters not that shares of her or claims upon her belong to neutrals; all interests are bound up in the nationality of the vessel, all the owners have embarked in a common adventure. The cargo is not a unity; it has no common character, it has no nationality of its own; the character and nationality of every parcel depends upon that of the particular owner. There may, however, be joint interests of belligerents and neutrals in the whole or portions of the cargo. Whatever portions of the cargo on board a hostile vessel belong to neutrals are exempt, whatever shares or interests in a cargo owned jointly by neutrals and enemies appertain to the neutrals, are exempt. If the neutral and enemy owners are partners, the question becomes more difficult, for their veritable interests depend on the state of their respective accounts with the partnership, and not on their nominal shares; but to deal justly in the question of capture their interests in the cargo should be regarded as corresponding with their shares in the partnership concern.

1756. Such are the principles which ought to prevail, and which, in consequence of the declaration of Paris, may hereafter be adopted; but the precedents of prize courts, while

some nations confiscated neutral cargo in the hostile vessel, and others confiscated the goods of the enemy on board the neutral vessel, were in some respects accordant with, and in others unconformable to, these principles. We shall exhibit some, but have not space for many, of the opinions of prize courts on those subjects.

1757. "It is," says a venerable judge, "one of the most honourable distinctions which exist between a prize court and a municipal court, that a prize court looks at that which is *bonâ fide* true, while a court of law is sometimes bound by formality, which prevents real justice being done." How well the prize court deserves this high encomium, how many honourable distinctions there are in its favour in the administration of real justice, how much more impartial it is than municipal tribunals, must, we fear, be gathered from its practice rather than from its self-laudation.

1758. To protect herself against detention the ship should never sail without her sea-pass, or some similar document, showing the nation to which she really belongs, what flag she is entitled to bear, from which, if neutral, her character may be at once ascertained. Caroline.

1759. A neutral possessed the legal title to the whole of the ship and was beneficial owner of part, others were interested in other parts, therefore the "real justice" of the court condemned her. Nina. Aina.

A Russian had taken the oath of allegiance to the King of Denmark, his ship was exempt from capture by the Order of Council, he claimed her as a Danish subject, the "real justice" of the court condemned her, because the claim was made in the wrong character. Ernst. Soglasie.

1760. The court refused to recognize the lien of a neutral on an enemy ship, correctly, but with this observation,—*"It is a different question whether lenity should be shown to British merchants when the captured vessel has been lying in a British port, and whether the court should allow an alien to put in a claim to defeat the right of captors."*

(Aina.) The international court, the impartial judge sitting at Stockholm, would hardly recognize this distinction between a British and a neutral lien, and would hardly recognize as a defeat of it the non-existence of a captor's right.

1761. It is to be expected that belligerents will sell such of their vessels as are in critical situations on the eve of war, to the sad disappointment of captors. "It will be a very nice question for consideration," says the judge, "whether it is competent for a British merchant, immediately antecedent to hostilities, to purchase shipping belonging to the subjects of that state likely to become hostile, and legally to hold it"! (Baltica.) Is it a greater contravention of the law of nations that it should be paid for by the merchant, than that it should be seized by the privateer?

1762. It has been held that an agreement for sale of an enemy's ship to a neutral, on the eve of war, is put an end to by the declaration of war. By what process of reasoning can this be maintained? the neutral and the belligerent are still competent to contract, and liable to perform, their reciprocal engagements. It is true that there are likely to be collusive arrangements, and the prize court therefore is "astute to protect the rights and interests of captors." It therefore holds that a contract for sale of an enemy's ship to a neutral, not completed by payment, is void as against the captor, whether made on the eve of or during war; (Sechs Geshwistern) and that a transfer of a ship in transitu from an enemy to a neutral during war is illegal, and a fraud on belligerent rights! (Jan Frederick.) If this doctrine is to prevail, the contract for sale of a neutral, in transitu, or on the eve of war, to an enemy, is equally void. It was held that the sale of a single ship, not in a blockaded port or in transitu, by an enemy to a neutral during war might be lawful, if the purchase-money was paid, the title of the vendor divested, and no interest of any kind left in him! (Baltica.) On all purchases from the enemy during or on the eve of war, the prize court requires strict proof of

payment of the purchase money, and of the bona fides of the transaction. Johan. Rapid. Christine.

1763. The court, with extraordinary intelligence and liberality, held that a bonâ fide donation which would pass property in the time of peace, would pass it in time of war, and that the gift of a ship, in the enemy's country by a father to his son, as the advance of a portion bonâ fide, did pass the title to the son, and that the son becoming a neutral was entitled to his own property, subject to the captor's expenses! Benedict.

1764. Property in transitu, if consigned unconditionally to the consignee, is his property, notwithstanding the mercantile right of stoppage; but if retained under his actual control, it belongs to the consignor.

1765. Goods hostile at the time of shipment are deemed hostile during the voyage,—that is, the property of the enemy, notwithstanding its sale in the passage to a neutral or a subject of the capturing nation; but if the property, neutral at the time of shipment, is sold to the enemy on the voyage, the prize court, for the benefit of captors, ratifies the sale. Boede's Lust.

1766. The owner ascertained is assumed in the prize court to take his national character from the place where he carries on his trade. (Nina.) It was said that a neutral, resident and carrying on his business in the enemy's country, is to be considered as "adhering to the enemy," and therefore his merchant ship is to be confiscated as an enemy's ship. (Aina.) But the occupation of a neutral state by an enemy does not deprive the people of their neutral character until the state is completely subdued. Gerasimo.

1767. The neutral merchant carrying on ordinary trade with the enemy's country has been held not to lose his neutral character by having a commercial agent there; but the prize court does not extend "this indulgence" to a privileged trade, and it unceremoniously condemns the cargo of a firm of which a member resides in the land of the foe; it condemns

the shares of all the neutrals, if permitted to remain after knowledge of the war, whether the chief seat of the business is there or in the neutral realm, with the exception only of goods shipped by the partnership *bonâ fide* on the exclusive account and risk of the neutral partner. Anna. *Vigilantia*. St. Joze. Frances. Suza. *Vriendschaf*.

1768. The native of a belligerent, domiciled in a neutral, country may lawfully trade with the adversary of that in which he was born. Danaus.

1769. CONTRABAND.—The owner of contraband forfeits the whole of it, together with all his interest in and all his other property on board the ship.

1770. The owners of the ship forfeit their interest in her if affected with notice that she is engaged in the offence; such notice is inferred from the vessel sailing under false representations, with false papers, or on a fictitious destination, or if the contraband is permitted to be concealed in the cargo, or is hidden by any device, or with the sanction of any officer who can be regarded as their agent.

1771. The country to which the vessel belonged was bound by treaty with the belligerent not to permit the conveyance of contraband; the court held that all persons interested in the ship and cargo were involved in the offence, on a pretence that she was to be regarded as an enemy's ship *Ringende Jacob*.

1772. Is it the law of the prize-court that if the contraband is of no value to the captors, they are to be compensated by confiscation of the ship, and all on board belonging to her owners? Of that character are military persons and despatches, which may be of great value to the enemy, but of little to the captors, since they can only sell the latter for waste-paper, and cannot now sell the former as slaves. The cargo may be released through the "indulgence" of the court, if the owners and their agents are entirely ignorant and innocent of the pernicious freight; but the ship can under no circumstances escape; the master must know the

character of his passengers, he must know that the despatches are for the officer of the enemy, he must be presumed to know the military character of their contents. She is in the service of the enemy, it matters not under what coercion; of that her owner must complain to his government. Nor is his offence terminated with the criminal voyage; so long as she continues in the employment of the enemy, her neutral character cannot be renovated. She is by the fatal mission dedicated to the foe, she is marked as the captor's reward. *Oronzabo*.

1773. It appears to be the practice of the prize court to allow the master and crew of the neutral their adventures, unless their conduct is impeachable, as having prevaricated in their examination, or having engaged in a fraudulent trade. 3 Phil. 346.

1774. VIOLATION OF BLOCKADE.—The sentence is confiscation of the ship which violates the law of blockade, absolute confiscation, with all she carries belonging to her owner, and with all she carries belonging to any who had notice of the blockade before the shipment, and of those who had employed the master as their agent in embarking the cargo, although she merely deviated to the blockaded port for necessary supplies. But the same "indulgence" (exemption of the innocent cargo) has been exercised where there was no knowledge of the blockade till after the ship had sailed, and the master, after receiving the information, obstinately persisted in going on to the port of his original destination. *Exchange*.

1775. CONVOY.—The sentence of the prize court for sailing under convoy, except when permitted by treaty, seems to have been confiscation of the vessel and the cargo and freight of her owners,—of all the cargo confided to the agency of the master, and of all the merchandise put on board by its owners aware that she was to sail under the protection of their country's flag.

1776. AGENCY.—The master is the agent of the ship-



owners, for the ship, and for their shares and interest in the cargo and the freight; their property entrusted to him is liable for all his transgressions on belligerent rights. He is the agent also of all owners of cargo who entrust it to his control otherwise than as a carrier for hire.

1777. But as regards neutrals, the owners are not responsible for the act of the master beyond the scope of the authority confided to him with the ship. Therefore the owners of a non-commissioned ship are not liable for an illegal capture made by the master without their privity or assent.

1778. COSTS, EXPENSES, and DAMAGES.—It was said that mere law costs, independently of damages, were seldom given by the prize-court. (*Leucade*.) The Privy Council, in the case of the *Ostsee*, although refusing the costs of the appeal, gave the appellant the costs of his decree for restitution, which had been refused by the court below. It appears to us that the Court should also have given the costs of the appeal, for the neutral is not responsible for the error of the prize-court judge.

1779. Captor's expenses were ordered to be paid out of the cargo, although it was held that the shipment was not in breach of the blockade. *Jeane*.

1780. It was held that although the freight due on an enemy's cargo constituted a charge on it, the captor's expenses in obtaining condemnation had precedence of the expenses of the neutral master. *Bremen*.

1781. If the crew of the captured vessel are grossly ill-treated, the prize court will award them damages against the captors, either in a distinct suit or incidentally in the principal cause, and, if necessary, decree payment by the owners of an offending privateer. 3 Phil. 571. *Del. Col. v. Arnold. Anna Maria. St. Juan. Die Fire Damer. Lively.*


1782. The Privy Council, restoring the proceeds of the ship, rested the disallowance of costs and damages on the particular circumstances of the case, and not merely on the fact that further proof was deemed necessary. *Ariel*.

1783. A decree for costs and damages is for complete indemnity for the capture. (*Leucade*.) But it is said that when restitution is awarded with costs and damages in the case of wrongful capture, the measure of the damages is the loss actually sustained, with interest thereon, from the date of the capture; that no allowance can be made for contingent profits (*Levin Lark*.); that the allowance is for—1st. Loss of chartered freight, not freight *pro rata itineris peracti*, unless the owner of the goods has accepted them at the shorter destination. 2ndly. Liabilities incurred for non-performance of his charter, or costs incurred in its subsequent performance. 3rdly. Interest upon the amount recovered, from the date at which the voyage would have been performed had the ship not been captured, to the time of payment; but no allowance for estimated profits which might have been derived from the employment of the ship after the termination of her chartered voyage. *Newport*.

1784. In the case of the *Ostsee*, the Privy Council in several respects corrected, or at least endeavoured to correct, the practice of the prize court. "Restitution of a ship and cargo may be attended, according to the circumstances, with any one of the following consequences:—(1) The claimants may be ordered to pay the captors their costs and expenses; or (2) the restitution may be simple restitution, without costs or expenses or damages to either party. (3) The captors may be ordered to pay costs and damages to the claimant. A ship may, by her own misconduct, have occasioned her capture; in such a case, it is very reasonable that she should indemnify the captors against the expenses which her misconduct may have occasioned; or she may be involved, with little or no fault on her part, in such suspicion as to make it the right, or even the duty, of the belligerent to seize her. There may be no fault either in the captor or the captured, or both may be in fault, and in such case there may be *damnum absque injuriâ*, and no ground for anything but simple restitution or there may be a

third case, where not only the ship is in no fault, but she is not by any act of her own, voluntary or involuntary, open to any fair ground of suspicion. In such a case, a belligerent may seize at his peril and take the chance of something appearing on investigation to justify the capture ; but if he fails in such a case, it seems very fit that he should pay the costs and damages which he has occasioned." These views were sustained by reference to the opinions of foreign as well as English jurists, and to decisions in the French, the American, and the English prize courts,—to, among others, the opinions and judgments of Lord Stowell. It was further declared that violence and vexation were not necessary to entitle the ship illegally captured to damages, and that the mistake occasioned by the act of their government could not relieve the captors. These doctrines, very lenient to captors, and regarding them as ministers of the law rather than as enforcing their own special rights in the institution of the search and detention, had abundance of declaration, but not an exuberance of practice, to support them.

1785. On the previous hearing of the case of the *Ostsee* before the venerable judge of the prize court, he said,—“ During the seventeen years that Lord Stowell presided in this court, and administered the law of nations with regard to war, I believe that out of the many ships and cargoes brought before him, he condemned the captors in costs and damages in only about ten or a dozen cases,—not one in a thousand. As far as I recollect, there are only three cases of restitution with costs and damages. I am well aware that when a seizure has been made without ostensible cause or reason, justice requires that the persons making the seizure should make good to the party the loss that may have been occasioned by the capture. At the same time, I am of opinion that this is the extremity of the law of nations, which ought not to be adopted except in cases which imperatively call upon the court so to do.” And on this ground he refused to give costs and damages to the ship-



owner against the captain of the Alban for breaking the blockade of Cronstadt several days before the blockade had been imposed. Ostsee.

1786. The same learned judge in the case of the Leucade, which came before him after the reversal of his decision in the Ostsee, thus again expressed himself, and he is surely a competent witness :—"The next class of precedents are—seizure without probable cause. This class must be subdivided. First, cases where it appears that the captors were guilty of misconduct or vexation. They are to be found upon the records and in our books. I believe there were some fourteen to eighteen cases. Secondly, cases of a totally different kind—cases when, upon the production of the depositions and ship's papers alone, no probable cause was disclosed. I believe that all the precedents which have been produced are cases which fall under the first of these divisions. I have dedicated a considerable portion of all the time I could spare to search on this question. All the cases which have been cited in the Ostsee were cases of this description,—for I have examined them; all cases of improper conduct on behalf of the captors. I say, then, that I verily believe that not one case will be found where Lord Stowell condemned the captors in cost and damages upon the production of the ship's papers and depositions, upon the ground that they did not disclose a probable cause of capture. I will state the ground of this belief. There were hundreds of cases,—not scores, but hundreds,—in which costs and damages must have been decreed had such been the rule. There is not a single one in which they were decreed, though restitution had been constantly passing every day, and sometimes many in a day. There are cases where captors' expenses had been refused, on the ground that the seizure was not justifiable; but costs and damages were not given."

1787. In a previous case said the same learned judge :—"It is the bounden duty of persons acting under the command of Her Majesty,—namely, officers in the Navy, to seize

all vessels whatever to which a hostile character might reasonably be attributed; and when they fairly discharge that duty, the courts have been astute in discovering reasons to release them, as far as possible, from liability." (Elise.) Lord Stowell had, in the case of the *Diligentia*, said:—"If the Admiralty issued an order for the capture of a particular ship, that will not affect the interest of the captor in the prize which he may make. The order of the Admiralty will justify the seizure, so far at least as to indemnify the captor from costs and damages." Which declaration Dr. Lushington thus expounds:—"Very different is the case where the government gives a lawful order, and the captor, from circumstances, has difficulty in applying it. In the case of an absolute order to seize a particular ship, Lord Stowell expressed his opinion that the captor would be indemnified; that is the case of the *Diligentia*. That is the expression used by Lord Stowell. Perhaps it may be somewhat ambiguous, but looking at the context, I think that in that case it meant he would not be liable to condemnation in costs and damages in a prize court;"—and in the case of the *Leucade*, he exempted the captors from costs and damages for the capture of an innocent vessel belonging to a protected neutral state.


1788. "The officer on shore," says an eminent prize court advocate, "is not compelled by wind and weather, or any vis major, or any overwhelming necessity, to act according to his unaided discretion upon the spur of the moment, but it is often the bounden duty of the commissioned captor so to act; and it is therefore with reason and justice that prize courts usually award costs, damages, and expenses to the captor when they decree restitution of the vessel which he has seized;" and again, "the reason of the thing therefore prescribes, that in case of capture on the high sea, if the captain has acted honestly, a less amount of probable cause—to use a phrase now stereotyped in the prize court—of suspicion shall avail, not only to protect him from the pay-

ment of damage to the vessel seized, but to insure him the payment of costs from her." 3 Phil. 536.

1789. This account given by the learned judge of its practice, and by the learned advocate of its principles, will not fascinate neutral nations, or strongly impress the reader with the impartiality of the prize court. We fear that it may be deemed more consonant with the ancient Scandian (379) than with the modern Scandinavian law. We venture to think that neutral nations will not be satisfied with its "reason and justice," or easily convinced of "the reason of the thing,"—that they will not approve the stereotyped phrase of the prize law.

1790. Let the government which issues the illegal command indemnify both the neutral and its own agent; let the government indemnify the injury inflicted by the mistake of its officer. Nations will deem that more accordant with reason, and more in conformity with the principles on which the derided municipal tribunals administer justice. They do not deem the accused guilty until he is convicted; they call upon the accuser to prove the offence, before they require the accused to vindicate his innocence. Were these principles better observed, there would be no question of neutral convoy, there would be no place for armed neutralities, no outcry from merchants ruined by the usurpations of war.

1791. Their precedents have inflicted on the people of France and England, during the present war, a wide-spread misery, from which, had their governments and prize courts conformed to the law of reason and nations, they would have been exempt. Their conversion of blockades into prohibitions of commerce seemed to sanction a practice which they were ashamed to contravene. They may be content to atone for their transgressions by submitting to the reprisals inflicted by the insulted law. The children in the second and third generation may be content to pay the penalty of their forefathers' offences. Their precedents may be cited against



them with apparent force ; but nations are not such unities as to be bound to submit to retaliation for every atrocity which their ancestors have perpetrated in semi-barbarous times. Their conduct is to be regulated by the reality of the law. Whether such submission redounds to their honour may not be always clear. It undoubtedly manifests their moderation ; it may induce the insults which moderation not unfrequently provokes. They may flatter themselves that such submission will ratify their practice, as precedents for future times ; but neither the repetition of their offences by others, nor an ignominious complicity of their own, will consecrate a wicked institution or constitute a law.

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#### CHAPTER XIV.

##### RECOGNITION.

1792. Has a kingdom been subdued ? Has a province been irrecoverably conquered ? Has an insurgent colony been reduced to obedience, or has it achieved its independence ? Has a federation resolved itself into its elements, or have they recombined in several leagues ? Has unity ceased to be a reality, or has that, which was formerly one, been irreparably severed ? Do the belligerents confront each other like nations ? Do they stand in the attitude and wield the power of independent states ? Are they respectively alike, offensive and defensive, engaged alike in resistance and in attack ? Or is it a doubtful struggle in a province which has hardly a hope beyond protracted resistance ? These are questions of fact, the nations are concerned in the decision.

1793. Rebellion has grown into insurrection. The insurgents have become a belligerent. The nations were compelled to admit it. The belligerent has become a nation.

When shall the empires and the kingdoms proclaim it? Shall they wait till the frenzy of the desperate antagonist has declared it? Must they delay until the tyrant has been vanquished and implores their aid?

1794. The sword has reaped the lands, and the bale-fires have consumed them. The plains are heaped with carnage, and the rivers are flowing with blood. Desolation sits in the dwellings. Invasion has executed its havoc. The cry for mercy through the wide regions has rent the air in vain. The desolators are repelled, their scattered hosts are rolled back over their own frontier, flying before the ministers of vengeance. The invader is invaded. The desolation and ravage of retaliation have begun. Stay the repetition, arrest the retaliation of conflagrations and murders. Humanity calls aloud to stop the barbarities. Honour re-echoes the call. The universal interest of nature and nations demands the termination of the terrific and hopeless contention.


1795. The physical fact is established, the nation is rent in twain. The declaration of their deliberate, dispassionate, impartial judgment is not a breach of neutrality towards either; it is the duty of all towards both to repress their reciprocal ravage, to proclaim that the warfare is hopeless, and by the force of recognition to arouse the slumbering reason of the despot who still struggles for dominion, and still hopes in the throes of despair.

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## CHAPTER XV.

### INTERVENTION.

1796. WHETHER the neutrals shall proceed further, shall cast off their neutrality, and add the force of arms to the efforts of persuasion, involves other considerations. They are not uninterested spectators. Their commerce is dis-





turbed, their interests are compromised, and they have a right to see that the laws of nature and of humanity are observed, that civilized men do not degenerate into savages. They have a right to say, your conflicts have proceeded thus far, the peace and the happiness of the world are endangered, society is disorganized, we will endure the ransacking of our ships and the spoliation of our cargoes no longer, there shall be an end of this unrighteous conflict; you may both be ruined, but neither reduced to compliance with the other's demands. The neutral nations have a right to say, this is not a petty disturbance of a little colony, struggling for what may or may not be its freedom, for what may or may not be a justifiable plan of independence, with which others are little concerned. It is a mighty quarrel in which the interests of the world are involved; unless you cease, we will throw our swords into the scale, determine our neutrality, and compel the refractory party to yield to reason, or to the aggregate force of our arms. But no duty is so imperative on a nation as to require it to enter upon war, unless in accordance with its honour, nor, except when bound by treaty, unless in accordance with its interest. It is not bound to involve itself in danger, or to lavish the blood and the treasure of its subjects in a doubtful strife.

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## CHAPTER XVI.

### PEACE.

1797. THE belligerents begin to faint and grow weary of mutual destruction, they begin to listen to the dictates of reason, and to negotiate for the restoration of peace. A truce or an armistice suspends their hostilities; no ship must be captured, nor army nor fortress assailed, within the region of the temporary cessation of war. They must

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adjust the terms with care, for except as provided by the treaty, all questions with which the war began, all that have arisen in its progress, all appeals from the condemnation of ships and cargoes, all reclamations and compensations are determined, and all new rights and acquisitions are fixed in the state in which they stand. The treaties of commerce should be renovated or improved.

1798. Every capture from adversary or neutral, every recapture after the time specially fixed for the commencement of peace in the place in which it is made, or after the signature of the treaty is known there, although the time fixed as to remote places has not arrived, must be restored, whether the knowledge is derived from authentic sources or from general information.

1799. The treaty is at length concluded, the tomahawk is buried. The nations breathe again. The funerals and desolation are for a moment forgotten, the lands resound with joy. The Temple of Janus is shut. The functions of the prize court have ceased, except for the winding up of the wickedness of the war.



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• *Staphylococcus hyicus* (Staph hyicus)

• *Staphylococcus pasteuri* (Staph pasteuri)

• *Staphylococcus saprophylus* (Staph saprophylus)

• *Staphylococcus epidermidis* (Staph epidermidis)

• *Staphylococcus aureus* (Staph aureus)

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